Postponed until Nov. 8th. 11-23 Field
Bradley
Oct. 30-1876

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~231~~ 34

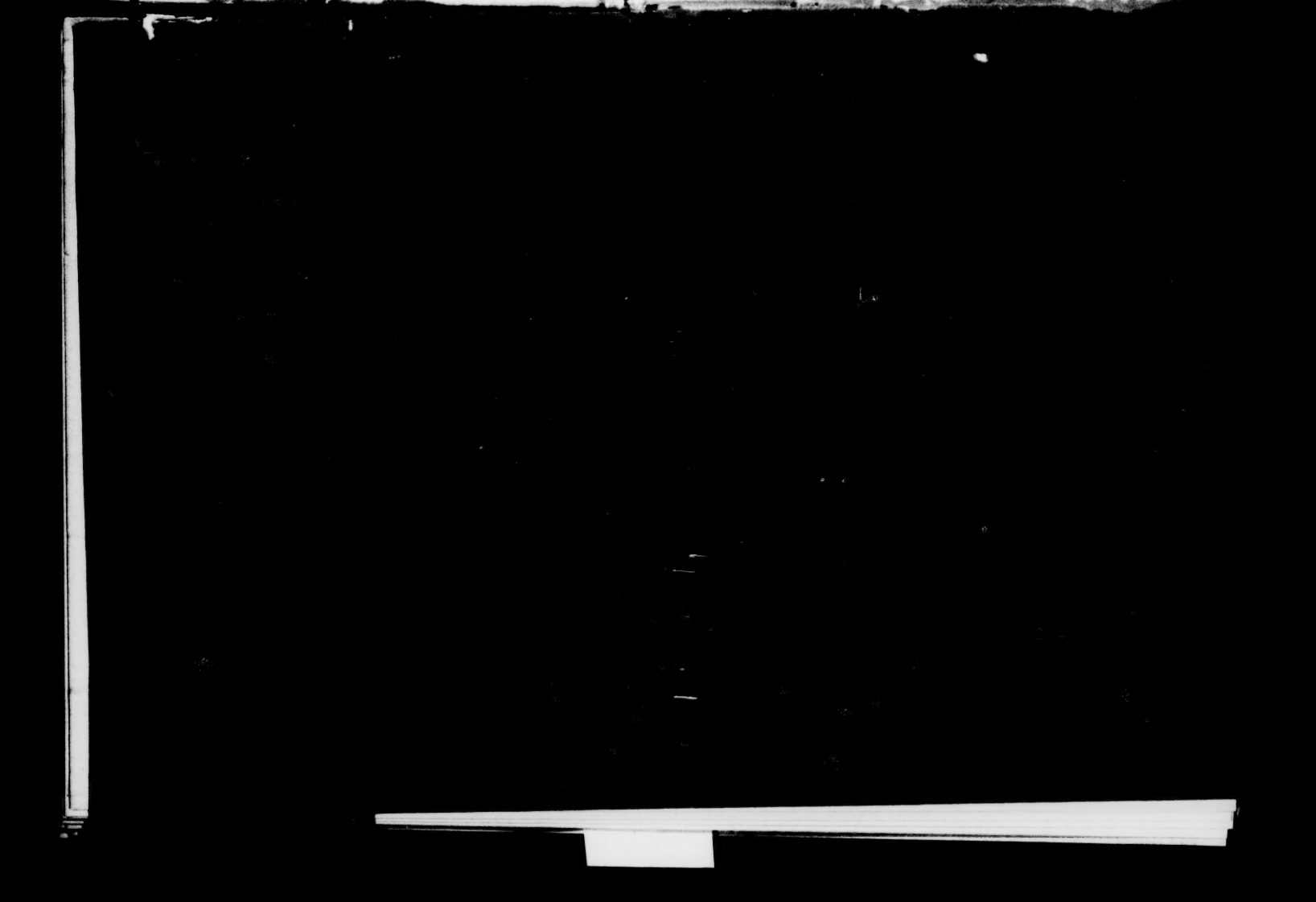
ASA MAY, APPELLANT,

vs.

ANDREW M. SLOAN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

FILED OCTOBER 13, 1876.



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1 Be it remembered that on the 7th day of February, A. D. 1876, the complainant, Andrew M. Sloan, filed in the circuit court of the United States for the northern district of Florida, fifth judicial circuit, middle division, a certified transcript of the record and proceedings in the circuit court of the State of Florida, second judicial circuit, in and for the county of Jefferson, in a certain cause wherein Andrew M. Sloan was plaintiff and Asa May was defendant, which said transcript is in the words and figures following, to wit:

Pleas in the circuit court of the State of Florida for the second judicial circuit, in and for the county of Jefferson, in a certain cause therein wherein Andrew M. Sloan is plaintiff and Asa May is defendant.

Be it remembered that on the fourteenth day of January, in the year of our Lord one thousand eight hundred and seventy-five, came Andrew M. Sloan, plaintiff, in the case aforesaid, by his attorneys, Papy & Raney, and filed in the clerk's office of the circuit court aforesaid his bill of complaint, in the words and figures following, to wit:

2 To the honorable P. W. White, judge of the circuit court of the second judicial circuit of the State of Florida, in and for Jefferson County, in chancery sitting:

Andrew M. Sloan, a citizen of the State of Georgia, brings this his bill of complaint against Asa May, of Jefferson County aforesaid, a citizen of the State of Florida, and thereupon your orator complains and says that in January, 1872, your orator, and John H. Sloan were partners and commission merchants doing business in Savannah, Georgia, under the name of A. M. Sloan & Co.; that on the 17th day of January, 1872, said A. M. Sloan & Co., having before then made large advances to Alvin May, of Jefferson County, Florida, the said Alvin May became and was then largely indebted to said A. M. Sloan & Co. That as evidence of said indebtedness, said Alvin May, on said day, executed three notes to said A. M. Sloan & Co., or bearer, payable respectively on the first days of January, 1873, 1874, and 1875; the first for $16,834.28; the second, for $18,777.14, and the third for $20,696.78 That to secure said notes, said Alvin May, on the 18th day of January, 1872, made and executed his mortgage to A. M. Sloan & Co., covering certain lands in Jefferson County, in this State, and described in

3 said mortgage as follows: All of that tract of land situate, lying, and being in the county of Jefferson and State of Florida containing six hundred and sixty acres, more or less, and known as the Elbow tract, and bounded on the south by the Scuffle place and the Ware place; on the west by the Picolata place, and on the north by the Asa May place, all of said land, except eighty acres, being in section twelve (12), in township one (1), and range four (4); also, another tract or parcel of land situate, lying, and being in the county of Jefferson and State of Florida containing one thousand and twenty (1,020) acres, more or less, and known as the W. H. Arendell place, said tract being bounded on the west by R. H. Gamble's place; on the south by the Byrd land, now occupied by Neely, and on the northeast by a swamp; also, another tract or parcel of land situate, lying, and being in Jefferson County, Florida containing twelve hundred (1,200) acres, more or less, and known as the Asa May place, and bounded on the northeast by the R. H. Gamble place, on the south by the Picolata place, and on the west by the Alvin May place; also, another tract or parcel of land situate, lying, and being in the county of Jefferson and State of Florida contain-

ing one hundred and fifty (150) acres, more or less, and known as the S. F. May place; and bounded on the northwest by the Gorman place, owned by Joseph Reid; on the east by the Asa May
4 place; on the south by the Joseph Reid place; also, another tract or parcel of land, situate, lying, and being in Jefferson County, in the State of Florida, containing eleven hundred (1,100) acres, more or less, and known as the McCain place, and bounded on the northeast by the F. J. Scruggs place, on the south by M'r's Barrington's, and on the west by James De Witt's place; also, another tract or parcel of land situate, lying, and being in the county of Jefferson and State of Florida containing eighteen hundred (1,800) acres, more or less, and known as the Lang and Picolata places, the Lang place being bounded on the south by the James B. Gamble place, on the west by the Jno. A. Edwards place, and on the northeast by the Elbow place and the Grant Scurry place, said tracts containing in all five thousand nine hundred and thirty acres, together with all the tenements, hereditaments, and appurtenances to the same in any wise belonging or appertaining. That on the same 18th day of January, 1872, said Alvin May, also, for the purpose of further securing said notes executed his other mortgage and delivered the same to said A. M. Sloan & Co., covering all of the stock, mules, horses, cows, &c., then owned by said Alvin May, in the county of Jefferson, State of Florida, and all the crops of cotton and corn grown by Alvin May, in the year 1872, on the places in Jefferson County mentioned in said mortgage. Your orator annexes hereto
5 the original of said mortgage covering said lands, and a copy of the mortgage covering said mules and personal property marked Exhibits A & B, which he prays may be taken and considered as a part of this bill of complaint.

Your orator further shows unto your honor that said Asa May, in about the month of January, 1868, or before then, sold to said Alvin May his land in Jefferson County aforesaid, usually known as the Asa May place, containing about eleven hundred acres, and all the stock and personal property thereon, for about twenty thousand seven hundred dollars, as your orator is informed and believes; that said sum was for currency, which amount was reduced by consent of said Asa and Alvin May to a specie basis, and by mutual consent the amount of said indebtedness was fixed at fourteen thousand eight hundred and forty-eight $\frac{56}{100}$ dollars in gold; that for said amount said Alvin gave to said Asa May eight sealed notes, seven of which were payable to said Asa May, or bearer, for two thousand dollars in gold, or its equivalent in currency, with interest from date, and were payable respectively on the first day of January, in the years 1869, 1870, 1871, 1872, 1873, 1874, and 1875, and the eighth of said notes was for $848.56 dollars in gold or its equivalent, to fall due the first day of January, 1876; that to secure said notes said Alvin May made, executed, and delivered to said
6 Asa May his deed of mortgage dated the 21st day of January, 1868, covering the following described land situated in Jefferson County aforesaid, viz: In township one (1), range four south and east, in section one thereof, the west half of the southwest quarter; in section two thereof the south half; in section three thereof the west half of the northeast quarter, the northwest quarter, the east half of the southwest quarter, and the southeast quarter; in section ten thereof the northeast quarter, the east half of the northwest quarter, and twenty-eight and a half acres in the west half of the northwest quarter, said twenty-eight and a half acres being the same land bought of Joseph Reid, as per deed bearing date on the thirty-first day of May, A. D.

1856, and the south half; in section eleven thereof the west half of the northeast quarter, the northwest quarter, and the south half; the whole of section fourteen thereof, except that part lying south of the S't Augustine road, and sold and conveyed to Grant Scurry; and the whole of section fifteen thereof; and in section twelve thereof the west half of the northwest quarter, together with the tenement thereon, and all the privileges and appurtenances thereunto appertaining and belonging; also, all the personal property now belonging to me, or which may hereafter become vested in me, used in cultivating my said lands, or upon the same.

7 Your orator further shows unto your honor that the said lands, covered by said mortgage, embraced the land sold by the said Asa May to the said Alvin May, and also other lands, amounting in the aggregate to about three thousand acres. Your orator annexes a copy of said mortgage, marked Exhibit C, as a part hereof.

Your orator further shows unto your honor that the land described in the mortgage from Alvin May to A. M. Sloan & Co., as the Asa May place, was and is the land sold by said Asa to said Alvin May, as hereinbefore mentioned; that the land described in the mortgage to A. M. Sloan & Co. as the Picolata place, and the land described as the Lang place, were, your orator admits, covered by said mortgage from Alvin to Asa May. Your orator also alleges that the mortgage to A. M. Sloan & Co. covered all the land embraced in the mortgage to said Asa May, and also covered nearly three thousand acres more; that for part of the land not embraced in the Asa May mortgage, but embraced in the mortgage to A. M. Sloan & Co., said Alvin May had no title, to wit, the McCain place and part of the Elbow place, & hence the lien on said land in favor of said mortgage failed; that what is described as the Lang place in said mortgage embraces the Lang place proper, of about 640 acres, and what was known as the Alvin May home-place, of about 320 acres.

8 Your orator further shows unto your honor that on the eighth day of May, 1873, said Asa May recovered a judgment against said Alvin May, in the circuit court for Jefferson County aforesaid, for $5,782.15 dollars in gold coin, besides costs, and that execution therefor issued thereon the 20th day of June, A. D. 1873, and that said execution came to the hands of the sheriff of said county 24th June, 1873; that said judgment your orator alleges, on information and belief, was based on some of the notes given by said Alvin to said Asa, as hereinbefore mentioned, but your orator cannot state which of said notes. Your orator alleges, on information and belief, derived from said Alvin May, that he paid in currency on his indebtedness to said Asa May in or about the sum of eleven thousand dollars in cash.

Your orator further shows that, having in his own right become the owner of said notes and mortgage given by Alvin May to A. M. Sloan & Co. as aforesaid, he brought suit in name of A. M. Sloan & Co. to recover what was due when the action was instituted, the first note being only then past due, and on the same eighth day of May, 1873, he recovered a judgment against said Alvin May in Jefferson circuit court aforesaid, in name of A. M. Sloan & Co., for $1,381.66 dollars, and that execution was issued thereon for said sum on the 20th day of June, 1873, which went into the hands of the sheriff of said county on the same 24th day of June, 1873, being the same day that the execution in favor

9 of said Asa May went into the hands of said sheriff aforesaid, and, as your orator believes, simultaneously with it; and your orator annexes hereto copies of said executions, marked Exhibits

D & E, which he prays may be taken and considered as a part of this bill of complaint.

Your orator further shows unto your honor that, on the 13th day of December, 1873, your orator entered into a negotiation with said Alvin May, with a view of purchasing a part of the property covered by the mortgages to your orator, which resulted in a contract and agreement between said Alvin May and your orator, by which said Alvin bargained and sold to your orator the lands owned by him in said county known as the Lang place, the Gamble eighth, the Harvey forty, and twenty acres belonging to the Gorman eighth, and the Murray land, comprising eleven hundred acres, more or less, also six mules, one thousand bushels of corn, one four-horse and one two-horse wagon, the said lands comprising the home settlement, the house formerly occupied by the said Alvin May, and the other tenements and improvements thereon. The said May thereby agreed to give a good title to the same, and the same was to sell in such way as to make the title perfect at sheriff's sale, if necessary, to satisfy judgments now (then) upon record, or mortgages. The payments were to be made upon the claims existing against said May, and in favor of your orator. Your orator was by said agree-
10 ment to have possession immediately, and the said May was to vacate the houses by the first of January or sooner, if possible. The consideration was twenty-one thousand dollars, which was, as stated, to be in effect credited on the claims of your orator against said Alvin May. Your orator annexes a copy of said agreement and contract, marked Exhibit F, which he prays may be considered as a part hereof.

Your orator further shows, that the title for part of what is described as the Murray land failed, viz, about 160 acres thereof. The original of said agreement is now in the hands of Samuel Pasco, esq. Your orator also shows that said lands described in said mortgage to Asa May, and which are included in the mortgage to your orator, it was expected, when said agreement was made, would be sold on the first Monday of January, 1874. That Alvin May had agreed to waive advertisement of sale. That the sale was to take place on the first Monday in December, 1873, as appears by the waiver signed by Alvin May, dated October 28th, 1873, hereto annexed, marked Exhibit G, and prayed to be taken as a part hereof. That said sale did not take place on said day, but on the first Monday of January, 1874. Your orator alleges and claims that the mortgages in favor of your orator, given to A. M. Sloan & Co. and to Asa May, were a first lien on the property, real and personal, described therein, and were entitled to priority over other creditors,
11 out of the proceeds of the sale of said property. Your orator admitting that said Asa May's mortgage was prior to your orator's mortgage on the lands covered by it.

Your orator further shows unto your honor that negotiations were entered into between your orator and Asa May and Alvin May in regard to the matters of business between them and their several claims against said Alvin May; and that on the 5th day of January, 1874, an agreement was entered into, a copy of which is hereto annexed, marked Exhibit H, which is prayed to be taken and considered as a part of this bill of complaint. That by the last clause of said agreement Asa May agreed not to interfere with the bona fide trades made by Alvin May, as far as any of the mortgaged property is concerned, provided the trades have been carried out in good faith and completed. Said agreement was deposited with S. Pasco, esq., who now has control of the same.

Your orator further shows unto your honor that, although a clause in said agreement declares that unless there are other purchasers ready

to bid the amount of Asa May's claim, he is to buy in the property for his own use, the real purpose was, and it was so understood and agreed, that the purchase was to be made by said Asa May of all the
12 property to be sold, and that he was afterwards to convey to your orator in full title the lands purchased by your orator from Alvin May, as indicated and expressed in and by the agreement made with him on the thirteenth day of December previously, viz, the 13th day of December, 1873, and also to turn over and transfer the six mules and wagons and corn purchased as aforesaid, as expressed in said agreement. That the last clause in said agreement was inserted after the former part had been written, for the express purpose of securing to your orator the verbal understanding and agreement, as aforesaid, to convey the land and mules, wagons and corn, to your orator by said Asa May, as aforesaid. That the trade made by the said Alvin with your orator, as shown in said agreement of the 13th of December, 1873, for the sale to your orator of the lands and mules, wagons and corn, aforesaid, was the special trade intended to be referred to by said last clause of the agreement of the 5th of January, 1874. That said trade was carried out in good faith, and completed according to the understanding of the parties, and the manner by which your orator was to acquire the title was as agreed on, viz, that the land and mules, wagons & corn, which were to be sold with the other land, were to be bought by said Asa May and by him conveyed to your orator, as already stated. That the consideration your orator was to give for said land and mules,
13 wagons and corn, was to be paid, as shown in said agreement of the 13th day of December, 1873, by crediting the amount thereof on the debt due your orator by said Alvin May. That your orator went into possession of said lands, and, after the sale, the first Monday of January, 1874, the mules bought by said Asa May were valued, and six average mules were turned over and delivered to your orator according to the understanding and agreement of the parties. The wagons were also turned over to your orator.

Your orator further shows unto your honor that said Asa May was and is the relative, and, as your orator is informed and believes, the confidential friend of said Alvin, and was, as your orator is informed and believes, disposed to favor and befriend him. That said Alvin had become involved in a large indebtedness beyond his means of payment, and that all his property was incumbered by liens of mortgages and judgments and executions. The primary liens were in favor of said Asa May and of your orator by virtue of the mortgages aforesaid. That your orator's mortgage, viz, the mortgage to A. M. Sloan & Co., afterwards acquired by your orator in his individual right, was subordinate to the mortgage to said Asa May upon the land covered by the latter mortgage, but your orator's mortgage covered land not embraced in the mortgage to said Asa May, and especially did it cover the land
14 mentioned in said agreement of 5th of January, A. D. 1874, as the Arendell place, which was not embraced in the mortgage to said Asa May. That said agreement of 5th of January, 1874, was intended as a settlement and adjustment between the parties, and therein said Asa May and your orator agreed and bound themselves to make no further personal claims upon Alvin May on account of the mortgage and judgment debts of theirs against him. And your orator, as well as said May, agreed to make no further claim to said Arendell place, but to permit the title to vest in said Alvin or his wife. Your orator thus agreed to waive all personal claim against said Alvin, and also to release his said mortgage on the Arendell place by agreeing to

make no further claim to said place in consideration of the understanding and agreement between said Asa May and your orator known to said Alvin; that said Asa May was to convey to your orator the lands and mules, wagons, & corn mentioned in said agreement of the 13th December, 1873, and that thus your orator was to acquire title thereto. Your orator expressly alleges that such was the understanding of the parties, and such was the purpose intended by the agreement of the 5th January, 1874, when he signed and executed the same. That any other construction of said agreement would result in your orator's having surrendered his claim against Alvin May, and released his mortgage on the Arendell place, and having signed said agreement of 5th January, 1874, for no purpose whatever and without any consideration for his benefit, and to vest in said Asa May the entire property for an indebtedness much smaller than that due to your orator, or if it should be held that by reason thereof your orator is entitled to fall back on his mortgage, and claims, then, that the benefits which Alvin May intended to derive from said agreement and understanding of the parties would entirely fail, and he would lose as well the property as the benefits he intended to secure, and the said agreement will have been nothing more than an idle ceremony, except beneficial to said Asa May alone, who was not to have the competition of your orator as a bidder at said sale.

15

Your orator further shows unto your honor that for the lands and property sold by said Asa to Alvin May he had received in and about eleven thousand dollars in currency, part of which said Alvin had procured from your orator to pay said Asa. That by the understanding and agreement referred to, he, on becoming the purchaser at said sale, was for the balance of the money due him to reacquire the land sold by him to said Alvin, and in addition thereto the Picolata place, which is a valuable tract of land contiguous thereto. That by this acquisition in addition to the payments made to him it would result that he would be no actual loser in values. That your orator was to get the lands & mules, wagons, and corn mentioned in the agreement of 13th of December, 1873, the agreed price for which was to be credited to said Alvin on the debt due to your orator, and said Alvin was to be released from all further claims, and the Arendell place discharged from the lien of your orator's mortgage, as well as from his judgment against said Alvin May. That with this full understanding between the parties the agreement of the 5th January, 1874, was signed and executed by your orator, and that the same was so executed to carry out said understanding.

16

Your orator further shows unto your honor that the said sale did take place under and by virtue of sundry executions against said Alvin May, among them the execution in favor of Asa May and of your orator, and at said sale said Asa May became the purchaser at fifty cents per acre for the land, and that on the sixth of January, 1874, the sheriff of Jefferson County executed a deed to said Asa May conveying said land to said Asa. Your orator annexes hereto a copy of said deed to said May marked Exhibit I, to which he refers and prays that the same may be taken and considered as a part hereof.

17

Your orator further shows unto your honor that he entered into possession of the land mentioned in the agreement of 13th December, 1873, and obtained possession of six mules and the two wagons by delivery to him by said Asa, in the full expectation that said Asa May would convey said land to him, as agreed on; that so confident was he that this would be done that he was in no haste to re-

quest the deed to be executed by the said Asa; that, to his surprise, on applying to said Asa for said deed a few months ago, said Asa refused to execute a deed or to convey said land to your orator, and claimed that the land was his by virtue of his purchase at said sheriff's sale, and denied that he was under any obligation to convey the same to your orator; that he has since claimed the right to the possession of said land, and has demanded the same from your orator, and your orator has reason to apprehend that said Asa May will take legal proceedings, by virtue of the legal title being vested in him under the deed from the sheriff of Jefferson County, to assert his title to the same, and to acquire possession of said land, all of which is contrary to equity and good conscience, and your orator charges that he is entitled to demand and have a deed from said Asa May conveying to your orator the lands mentioned in said agreement of 13th December, 1873, and that said
18 May should be perpetually enjoined and restrained from asserting any right or title thereto.

Your orator further shows that the land purchased by him from Alvin May, as by the agreement of 13th December, 1873, is more particularly known and described as follows, viz: All of section fifteen in township one south, range four east; the southwest quarter, and the west half of the southeast quarter, and the west half of the northeast quarter, and the east half of the northwest quarter, and twenty-eight and ½ acres in the west half of the northwest quarter, said twenty-eight eight and ½ acres being the land bought of Joseph Reid by Alvin May, dated 31 May, 1856, and the west half of the southeast quarter of the northeast quarter, all of said last-described land being in section ten, in township one, of range four, south and east.

Your orator further shows that, by agreement and understanding at said sheriff's sale, the corn mentioned in the agreement with Alvin May was bid off by your orator; that your orator failed to get hands enough to cultivate all the lands aforesaid, and hence had no use for all said corn, whereupon he let said Asa May have a part of said corn, for the value of which he was to account to your orator, and did pay your orator three hundred dollars.

To the end, therefore, that the said defendant may, if he can, show
19 why your orator should not have the relief hereinafter prayed, and may, upon his corporal oath, full, true, direct, and perfect answer make in the premises, and especially that he may answer whether or not the several copies of mortgage from him to Alvin May, and of the deed to him from the sheriff of Jefferson County, and of the agreements and contracts, and other copies hereto annexed are true copies of the originals thereof, and whether or not the original contract with Alvin May, of 13th of December, 1873, and the original agreement signed by your orator and said Asa May and Alvin May, dated 5th January, 1874, were deposited with Samuel Pasco, of Monticello, and are or are not now in his custody.

And that it may be decreed that your orator is entitled to have the land purchased by him from Alvin May, as per agreement made 13th December, 1873, conveyed to him by said Asa May, and that said Asa May may be decreed to convey to your orator, by a proper deed, to be executed by him according to law, the said land, which is hereinbefore more particularly described, or on failure or default on his part to do so, that it may be decreed that the master of this court do convey said land to your orator so as to vest the legal title thereto in your orator and divest the said Asa May thereof; and that it may be decreed that said Asa May be perpetually enjoined and restrained from attempting

to obtain possession of said land, and from instituting any pro-
20 ceedings, either at law or in equity, to obtain possession of the same, or from asserting any right or title thereto, and that until the final hearing and decree in this case, the said Asa May may be enjoined and restrained from any effort to obtain possession of said land, and from proceeding in any manner or from taking any steps to assert any right or title thereto, or to dispossess your orator thereof, or that your orator may have such other or further relief in the premises as the nature of this case may require, and as may to your honor seem meet.

May it please your honor to grant unto your orator the State's most gracious writ of subpœna, to be directed to said Asa May, commanding him to be and appear before your honor in this honorable court at a certain day and time to be therein fixed, full, true, direct, and perfect answer to make in the premises, and to stand to, obey, abide, and perform such decree in the premises as to your honor may seem meet, and that an injunction may be granted as prayed for, and your orators as in duty bound will ever pray, &c.

PAPY & RANEY,
Sol's & Counsel for Complainant.

STATE OF FLORIDA:

A. M. Sloan, the complainant in the foregoing bill of complaint, being duly sworn, says the matters and things alleged in the foregoing bill of complaint as of his own knowledge are true, and those stated to
21 be derived from the information of others he believes to be true.

A. M. SLOAN.

Sworn to and subscribed before me this ninth day of January, A. D. 1875.

[OFFICIAL SEAL] GEO. LEWIS,
Notary Public, Leon County, Florida.

And the following is Exhibit A, mentioned above:

STATE OF FLORIDA,
Jefferson County:

This indenture, made the eighteenth day of January, in the year of our Lord one thousand eight hundred and seventy-two, between Alvin May, of the county of Jefferson and State of Florida, of the first part, and A. M. Sloan & Co., copartners doing business in Savannah, G'a, and composed of A. M. Sloan and John H. Sloan, of the county of Chatham and State of Georgia, of the second part, witnesseth:

That the said Alvin May, party of the first part, is justly indebted to the said A. M. Sloan & Co., parties of the second part, their heirs, executors, administrators, and assigns, on three several certain promissory notes, each bearing date the seventeenth day of January, A. D. eighteen hundred and seventy-two, and in the words and figures as follows, to wit:

$16,834.28.] SAVANNAH, G'A, *Jan.* 17, 1872.

On the first day of January, 1873, I promise to pay to A. M. Sloan & Co., or bearer, sixteen thousand eight hundred and thirty-four $\frac{28}{100}$ dollars for value received.

ALVIN MAY.

22 $18,777.14.] SAVANNAH, G'A, *Jan. 17th*, 1872.

On the first day of January, 1874, I promise to pay to A. M. Sloan & Co., or bearer, eighteen thousand seven hundred and seventy-seven doll$_{100}^{14}$ars for value received.

ALVIN MAY.

$20,696.78.] SAVANNAH, G'A, *Jan.* 17, 1872.

On the first day of Jan'y, 1875, I promise to pay to A. M. Sloan & Co., or bearer, twenty-thousand six hundred and ninety-six $_{100}^{78}$ dollars for value received.

ALVIN MAY.

Which said notes represent the amount due the said A. M. Sloan & Co. for money advanced and loaned to the said May.

And whereas the party of the first part desires and intends by these presents to assure and secure the payment of the said three several notes, according to their tenor and effect, at the maturity thereof:

Now, therefore, in consideration of the premises, and in the further consideration of ten dollars to him in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, the party of the first part doth give, grant, bargain, sell, and convey to and unto the parties of the second part, their heirs, executors, administrators, and assigns, all of that tract of land situate, lying, and being in the county of Jefferson and State of Florida, containing six hundred and sixty acres, more or less, and known as the Elbow tract,
23 and bounded on the south by the Scuffle place and the Ware place, on the west by the Picolata place, and on the north by the Asa May place; all of said land, except eighty acres, being in section twelve (12) in township one (1) and range four (4); also another tract or parcel of land situate, being, and lying in the county of Jefferson and State of Florida, containing one thousand and twenty (1,020) acres, more or less, and known as the W. H. Arendell place, said tract being bounded on the west by R. H. Gamble's place, on the south by the Byrd land, now occupied by Neely, and on the northeast by a swamp: also another tract or parcel of land situate, lying, and being in Jefferson County, Florida, containing twelve (1,200) hundred acres, more or less, and known as the Asa May place, and bounded on the northeast by the R. H. Gamble place, on the south by the Picolata place, and on the west by the Alvin May place; also another tract or parcel of land situate, lying, and being in the county of Jefferson and State of Florida, containing one hundred and fifty (150) acres, more or less, and known as the S. F. May place, and bounded on the northwest by the Gorman place, owned by Joseph Reid, on the east by the Asa May place, on the south by the Joseph Reid place: also another tract or parcel of land situate, lying, and being in Jefferson County, in the State of Florida, containing eleven hundred acres, more or less, and known as the McCain place, and bounded on the northeast by the F. J. Scrugg's place, on the south by M'r's Barrington's, and on the west by James DeWitt's
24 place; also another tract or parcel of land situate, lying, and being in the county of Jefferson and State of Florida, containing eighteen hundred (1,800) acres, more or less, and known as the Lang and Picolata places, the Lang place being bounded on the south by the James B. Gamble place, on the west by the Jno. A. Edwards place, and on the northeast by the Elbow place and the Grant Scurry place, said tracts containing in all five thousand nine hundred and thirty

acres, together with all the tenements, hereditaments, and appurtenances to the same in any wise belonging or appertaining:

To have and to hold the above conveyed premises to the said A. M. Sloan & Co., their heirs and assigns, forever; provided always, and these presents are upon this express condition, that if the said Alvin May, party of the first part, shall well and truly pay, or cause to be paid, each of the said promissory notes above set forth, at the maturity thereof, according to the tenor and effect of said notes, and not make default therein, then this indenture of mortgage and everything therein contained to be of no validity and absolutely void; else to remain in full force, virtue, and effect.

Given under my hand and seal the day and year first above written.

ALVIN MAY. [SEAL.]

Signed, sealed, and delivered in our presence:

WM HARDEN.

ANDREW SLOAN.

25 STATE OF GEORGIA,

Chatham County, City of Savannah:

Be it remembered that on this eighteenth day of January, in the year of our Lord one thousand eight hundred and seventy-two, before me, the undersigned John W. Burroughs, a commissioner resident in the city of Savannah, duly commissioned and qualified by the executive authority and under the laws of the State of Florida to take the acknowledgment and proof of deeds, et cetera, to be used or recorded therein, personally appeared Alvin May, to me known to be the individual described in, and who executed the foregoing mortgage, and acknowledged to me that he did sign, seal, and deliver the same as his free act and deed on the day and year therein mentioned, and for the consideration, uses, and purposes therein expressed.

In testimony whereof I have hereunto set my hand and affixed my official seal at the city of Savannah, county of Chatham, and State of Georgia, on the day and year aforesaid.

[OFFICIAL SEAL.] JOHN W. BURROUGHS,

Commissioner of Deeds for the State of Florida.

STATE OF FLORIDA,

County of Jefferson:

The foregoing mortgage having been presented to me for record on the 17th day of October, A. D. 1872, and the execution thereof
26 being duly authenticated, I have recorded the same in deed-book M, folios 521, 522, 523, & 524.

Witness my official signature and the seal of said court, at Monticello, Fla, October 18th, A. D. 1872.

[SEAL OF COURT.] ROMULUS C. LOVERIDGE, *Clk,*

By ALLEN A. LETCHWORTH, *D. C.*

And the following is Exhibit B, mentioned above:

STATE OF FLORIDA,

Jefferson County:

To all whom these presents shall come:

Know ye that Alvin May of the one part, of the county of Jefferson and State of Florida, is justly indebted to A. M. Sloan & Co., copartners

doing business in Savannah, Georgia, and composed of A. M. Sloan and John H. Sloan, their heirs and assigns, on three several promissory notes, each bearing date the (17) seventeenth day of January, eighteen hundred and seventy-two, in the words and figures as follows, to wit:

$16,834 $\frac{25}{100}$.] SAVANNAH, G'A, *Jan. 17th*, 1872.

On the first day of January, 1873, I promise to pay to A. M. Sloan & Co. or bearer sixteen thousand eight hundred and thirty-four $\frac{25}{100}$ dollars for value received.

ALVIN MAY.

$18,777 $\frac{14}{100}$.] SAVANNAH, G'A, *Jan. 17th*, 1872.

On the first day of Jan'y, 1874, I promise to pay to A. M. Sloan
27 & Co. or bearer eighteen thousand seven hundred and seventy-seven $\frac{14}{100}$ dollars for value received.

ALVIN MAY.

$20,696 $\frac{75}{100}$.] SAVANNAH, G'A, *Jan. 17th*, 1872.

On the first day of January, 1875, I promise to pay to A. M. Sloan & Co. or bearer, twenty thousand six hundred and ninety-six $\frac{75}{100}$ dollars for value received.

ALVIN MAY.

Which said notes represent the amount due said A. M. Sloan & Co. for money advanced and loaned to the said May. And whereas the party of the first part desires and intends by these presents to assure and secure the payment of the said three several promissory notes above mentioned according to their tenor and effect at the maturity thereof:

Now, therefore, in consideration of the premises and in the further consideration of the sum of ten dollars to him in hand paid before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, the said party of the first part doth give, grant, bargain, sell, and convey to and unto the said parties of the second part, their heirs, and assigns, all of the stock, mules, horses, cows, &c., now owned by the said Alvin May in the county of Jefferson and State of Florida; also all of the crop of cotton and corn raised and grown by the said Alvin May on his lands in Jefferson County, Florida, in the year A. D. eighteen hundred and seventy-two, to wit, all grown on the Elbow
28 tract of land; that grown on the Arendell place; that grown on the Asa May place; that grown on the S. F. May place; that grown on the McCain place; that grown on the Lang and Picolata places, all of said land and stock being in Jefferson County, Florida.

To have and to hold the above conveyed property to the said A. M. Sloan & Co., their heirs and assigns, forever. Provided always that these presents are upon the express condition that if the said Alvin May, party of the first part, shall well and truly pay or cause to be paid each of the promissory notes above set forth at the maturity thereof according to the tenor and effect of said notes and not make default therein, then this mortgage and everything therein contained to be of no validity and absolutely void, else to remain in full force, virtue, and effect.

Given under my hand and seal the day and year below stated, viz, on

the eighteenth day of January, A. D. eighteen hundred and seventy-two.

ALVIN MAY. [SEAL.]

Signed, sealed, and delivered in our presence—
WM HARDIN.
ANDREW SLOAN.

[U. S. I. R. stamp, $56.50. A. M. S. & Co. April 5th, '72.]

Re-executed, delivered, and acknowledged this 5th day of April, A. D. 1872.

S. PASCO.
L. A. HOLLY.

29 STATE OF FLORIDA.
County of Jefferson:

Be it remembered that on the 5th day of April, A. D. 1872, before the undersigned, clerk of Jefferson circuit court, personally came Alvin May, grantor to the foregoing mortgage, to me well known, and acknowledged that he signed, sealed, and delivered the same freely and voluntarily for the purposes therein expressed, whereupon I have recorded the same.

Witness my official signature and the seal of said court, at Monticello, Fla., May 3rd, A. D. 1872.

[SEAL.] R. C. LOVERIDGE, *Clerk*,
By A. A. LETCHWORTH, *D. C.*

I hereby certify that the foregoing is a true and correct copy of the original mortgage from Alvin May to A. M. Sloan & Co., and recorded in deed book M., pages 234 & 235, as witness my hand and the seal of the circuit court of Jefferson County, Florida, this 30th day of December, A. D. 1874.

[OFFICIAL SEAL.] A. B. GRUNWELL, *Clerk*,
By JNO. GARWOOD, *D. C.*

And the following is Exhibit C, mentioned above, to wit:

STATE OF FLORIDA.
County of Jefferson:

This indenture, made and entered into on this the twenty-first day of January, A. D. 1868, between Alvin May of the first part, and Asa May of the second part, both of the county and State aforesaid, witnesseth:

30 Whereas the said party of the first part is justly indebted to the said party of the second part in the sum of twenty thousand seven hundred and eighty-eight dollars in current funds, which amount the said parties have by mutual consent reduced to a specie basis, and the said party of the first part has agreed to pay the same in eight annual payments in gold, or its equivalent in currency, at the time the several amounts shall fall due and become payable, and whereas the amount of the said indebtedness has been fixed by mutual consent, as aforesaid, at fourteen thousand eight hundred and forty-eight and $\frac{56}{100}$ dollars in gold, as expressed in eight certain promissory notes bearing even date with this indenture, and sealed with the seal of the said party of the first part, in seven of which said sealed notes or writings obligatory the said party of the first part bound himself to pay to the said party of the

second part or bearer the sum of two thousand dollars in gold, or its equivalent in current funds, with interest from date, in each said writings obligatory to fall due and become payable, respectively, on the first day of January, A. D. 1869, 1870, 1871, 1872, 1873, 1874, and 1875; and the eighth of which said writings obligatory in which the said party of the first part bound himself to pay to the said party of the second part or bearer eight hundred and forty-eight and $\frac{56}{100}$ dollars in gold,
31 or its equivalent, to fall due on the first day of January, A. D. 1876; and whereas the said party of the first part desires to assure and secure to the said party second part the payment of the said sums as expressed in the said writings obligatory together with the interest that shall fall due upon each and every one at the time they shall severally fall due and become payable, the said sums and the interest to be paid upon each in gold, or its equivalent in current funds, at the time they shall severally fall due, in accordance with the terms of the said writings obligatory:

This indenture therefore witnesseth that in consideration as well of the foregoing as of the sum of ten dollars in hand paid at and before the ensealing and delivery hereof, the receipt whereof is hereby acknowledged, the said party of the first part hath given, granted, bargained, and sold, and doth by this indenture give, grant, bargain, sell, and convey unto the said party of the second part, his heirs and assigns, forever, the following-described lands, situate, lying and being in said county and State, and known and described according to the description on the books of the land office at Tallahassee, as follows, to wit: In township one, range four south and east, in section one thereof the west half of the southwest quarter; in section two thereof, the south half; in section three thereof, the west half of the northeast quar-
32 ter, the northwest quarter, the east half of the southwest quarter, and the southeast quarter; in section ten thereof, the northeast quarter, the east half of the northwest quarter, and twenty-eight and a half acres in the west half of the northwest quarter; said twenty-eight and a half acres being the same land bought of Joseph Reid, as per deed bearing date on the thirty-first day of May, A. D. 1856, and the south half; in section eleven thereof, the west half of the northeast quarter, the northwest quarter and the south half; the whole of section fourteen thereof except that part lying south of the St Augustine road and sold and conveyed to Grant Scurris; and the whole of section fifteen thereof; and in sections twelve thereof, the west half of the northwest quarter, together with the tenements thereon, and all the privileges and appurtenances thereunto appertaining and belonging; also, all the personal property now belonging to me or which may hereafter become vested in me, used in cultivating my said lands or upon the same:

To have and to hold the said granted premises, together with the privileges and appurtenances as aforesaid, unto him the said party of the second part, his heirs and assigns, unto his and their sole use, benefit, and behoof forever, including the personal property hereinbefore described; provided, however, and this indenture is given and executed only upon this condition, that if the said party of the first part
33 shall well and truly pay or cause to be paid the several sums as expressed in the several writings obligatory, hereinbefore mentioned, in gold or its equivalent in current funds at the time they shall severally fall due, then this indenture and everything herein contained shall be utterly null and void, and all the estate hereby granted shall cease and utterly determine, but in case of default in the payment of any of the said writings obligatory according to their tenor and effect

at the time it shall fall due and become payable, then this conveyance shall become absolute, and the premises herein granted shall thenceforth wholly vest in the said party of the second part, his heirs and assigns.

In testimony whereof the said Alvin May, party of the first part, and Martha E. May, his wife, in token of her relinquishment and release of all her right and claims of dower and expectation of dower, have hereunto set our hands and seals on the day and year first herein written.

ALVIN MAY. [SEAL.]
MARTHA E. MAY. [SEAL.]

Signed, sealed, and delivered in our presence. Lines interlined on 4th page, between 10 & 11 and between 16 & 17, before signing.

K. M. KILPATRICK.
M. A. GRANTHAM.

[U. S. I. R. stamp, $21. Jan. 21, 1868.]

34 COUNTY OF JEFFERSON:

Know all men by these presents that I, Martha E. May, wife of the aforesaid Alvin May, joined in the execution of the foregoing deed of mortgage, in token of my relinquishment and release of all my right and claim of dower in and to the said premises therein conveyed, and for the purposes therein expressed, subject, however, to the conditions of the said mortgage. And I do hereby acknowledge that I did the same freely and voluntarily, and without any compulsion or constraint, apprehension or fear, of or from my said husband, and that I do not wish or desire to retract the same.

In testimony whereof I have hereunto set my hand and seal on this the twenty-first day of January, A. D. 1868.

MARTHA E. MAY. [SEAL.]

Taken & acknowledged before me.

J. M. KILPATRICK,
Justice of the Peace.

COUNTY OF JEFFERSON:

I hereby certify that the foregoing relinquishment and the acknowledgment thereof were taken and made before me by the said Martha E. May, separate and apart from her said husband, the said Alvin May.

In testimony whereof I have hereunto set my hand and my private seal, there being no seal of office, this twenty-first day of January, A. D. 1868.

J. M. KILPATRICK,
Justice of the Peace.

35 COUNTY OF JEFFERSON:

Before the undersigned, clerk of Jefferson circuit court, came Alvin May and Martha E. May, to me known, grantors in the foregoing mortgage, who did my presence acknowledge that they signed, sealed, and delivered the same, as their own voluntary act, for the purposes therein set forth. Whereupon I have admitted the same to record.

Witness my hand and seal as clerk of said court this twenty-first day of January, A. D. 1868.

[L. S.] S. PASCO, *Clerk.*

I hereby certify that the foregoing is a true and correct copy of the original mortgage from Alvin May and Martha E. May to Asa May, recorded in deed-book K, pages 234 to 237, as witness my hand & seal of the circuit court of Jefferson County, Florida, this 30th day of December, A. D. 1874.

A. B. GRUNWELL, *Clerk.*

And the following is the Exhibit D, mentioned above, to wit:

Certified copy of fi. fa.

In Jefferson circuit court, Fla.

The State of Florida to all and every the sheriffs of said State, greeting:

We command you that of the goods and chattels, lands and tenements of Alvin May you cause to be made the sum of five thou-
36 sand seven hundred and eighty-two dollars and fifteen cents, in gold coin of the United States, which Asa May lately, on the eighth day of May, A. D. 1873, recovered in our circuit court for the county of Jefferson, in the second judicial circuit of Florida, for the damages which he has sustained by occasion of the non-performance of certain promises and assumptions made by said Alvin May to the said Asa May; as well the sum of twenty-eight dollars and twenty-five cents, currency of the U. S., which to the said Asa May was in the said court adjudged, for his costs by him in that behalf expended, together with lawful interest on the same from the date of rendition of said judgment till paid, and the costs of this writ, and of your proceedings hereon; and that you have the said sums of money before the judge of our said court, at Monticello, when satisfied, to render the same to the said Asa May, and have then and there this writ.

Witness my hand and the seal of said court, at Monticello aforesaid, this twentieth day of June, A. D. 1873.

[SEAL OF COURT.] A. B. GRUNWELL, *Clerk.*

(Endorsed on the back as follows:)

No. of cause, 173. Code. Jeff. circ't court. Asa May vs. Alvin May. Page 142, ex. docket. No. of execution, 2118. Damages, 5,782.15 in gold coin of U. S. Costs, 28.55. Fi. fa. & dock. 120.
37 Judgment entered May 8th, 1873.

S. PASCO, *Pl'ffs' Att'y.*

Came to hand June 24th, 1873.

S. B. BALDWIN, *Sheriff.*

I certify that the foregoing is a true copy of the fieri facias issued in the said cause of Asa May vs. Alvin May, No. 173 code, as witness my hand and the seal of the said court, this the 29th day of December, A. D. 1874.

[OFFICIAL SEAL.] A. B. GRUNWELL,
Clerk of Jeff. C't Ct, Fla.

Date of docketing of said judgment, May 8, 1873.

A. B. GRUNWELL, *Clerk.*

And the following is the Exhibit E mentioned above, to wit:

Certified copy of fi. fa. No. 2119.

The State of Florida to all and every the sheriffs of said State, greeting:

We command you that of the goods and chattels, lands and tenements of Alvin May you cause to be made the sum of thirteen thousand eight hundred and eleven dollars and sixty-six cents, which A. M. Sloan & Co. lately, on the eighth day of May, A. D. 1873, recovered in our circuit court for the county of Jefferson, in the second judicial circuit of Florida, for the damages which he has sustained by occasion of the non-performance of certain promises and assumptions made by the said Alvin May to the said A. M. Sloan & Co., as well the sum of
38 twenty-eight dollars and fifty cents, which to the said A. M. Sloan & Co. was in the same court adjudged for their costs by them in that behalf expended, together with lawful interest on the same from the date of the rendition of said judgment till paid, and the costs of this writ and of your proceedings hereon, and that you have the said sums of money before the judge of our said court at Monticello, when satisfied, to render the same to the said A. M. Sloan & Co., and have then and there this writ.

Witness my hand and the seal of said court, at Monticello aforesaid, this 24th day of June, A. D. 1873.

[SEAL OF C'T C'T.] A. B. GRUNWELL, *Clerk.*

(Endorsed on the back as follows:) No. of cause, 172. Code. Jeff. circuit court. A. M. Sloan & Co. vs. Alvin May. No. of execution, 2119. Damages, $13,811.66; costs, 28.50; fi. fa. & dock., 1.20.

Judgment rendered May 8th, 1873.

S. PASCO, *Pl'ffs' Att'y.*

Came to hand June 24th, 1873.

S. B. BALDWIN, *Sheriff.*

I certify that the foregoing is a correct copy of fieri facias issued in said cause No. 172, code, Jeff. Co., Fla., in the case of A. M. Sloan & Co. vs. Alvin May, as witness my hand and the seal of the circuit court of Jefferson County, Florida.

[OFFICIAL SEAL.] A. B. GRUNWELL,
Clerk of said Court.

39 Date of docketing of said judgment, May 8th, 1873.

A. B. GRUNWELL, *Clerk.*

And the following is Exhibit F, mentioned above, to wit:

STATE OF FLORIDA,
County of Jefferson:

Memorandum made and entered into this 13th day of December, A. D. 1873, by and between Alvin May and Andrew M. Sloan, relative to the sale of the lands and personal property hereinafter specified.

The said May, in consideration of one dollar in hand paid, of twenty-one thousand dollars to be paid by the said Sloan, bargains and sells to the said Sloan the lands owned by him in said county, known as the Lang place, the Gamble Eighth, the Harvey Forty, and twenty acres belonging to the Gorman Eighth, and the Murray land, comprising eleven hundred acres, more or less; also, six mules, one thousand bushels

of corn, one four-horse and one two-horse wagon, the said lands comprising the home settlement, the house formerly occupied by the said Alvin May, and the other tenements and improvements thereon. The said May is to give a good title to the same, and the same is to sell in such way as to make the title perfect at sheriff's sale, if necessary, to satisfy judgments now upon the record, or mortgages now existing, and
40 the payments are to be made upon the claims existing against the said May, and in favor of the said Sloan. The said Sloan is to have possession immediately, and the said May is to vacate the houses by the first day of January, or sooner, if possible.

Witness our hands and seals this 13th of December, A. D. 1873.

A. M. SLOAN. [SEAL.]
ALVIN MAY. [SEAL.]

Signed, sealed, and delivered in our presence—
A. DENHAM.
M. PALMER.

I hereby certify that the foregoing is a true and correct copy of the original agreement.

A. DENHAM.

And the following is Exhibit G, mentioned above, to wit:

STATE OF FLORIDA,
County of Jefferson:

Whereas the sheriff of Jefferson County has this day demanded a levy upon the property of the undersigned Alvin May to satisfy the execution in his hands against the said May, and whereas the said May desires to save costs and expenses in the matter of the said execution claims, and desires to make an effort to satisfy the said execution's creditors before the day of sale, he therefore consents and agrees, in consideration of saving the said costs, and of one dollar in hand paid, the receipt whereof
41 is hereby acknowledged, that his property shall remain in the county, subject to the said executions, the same as if a levy had been made thereunder; that the advertisement of the same for sale, as required by law, shall be waived; that the execution creditors and all and every of them, whether parties to this agreement or not, shall have the same rights on the day of sale to sell the same under their executions, at the hands of the sheriff, as if all the said executions had been regularly levied, and advertisement of the same had been made, the said May stipulating that in case of sale that the proceeds of the property sold be divided according to the legal rights of the several execution creditors, and that the sale take place on the first Monday in December, A. D. 1873, unless postponed by the consent of parties, the said May to aid the sheriff in bringing the personal property to the court-house on the day of sale. It is further stated that the said May waives none of his legal rights in the said property, which are to stand as if the sale were to proceed in the usual way.

In testimony whereof the said Alvin May has hereunto set his hand and seal on this the 28th day of October, A. D. 1873.

ALVIN MAY. [SEAL.]

Executed in our presence—
M. F. HENRY.
C. W. HENRY.

I hereby certify that the foregoing is a true & correct copy of the original of the foregoing agreement.

A. DENHAM.

42 And the following is Exhibit H, mentioned above, to wit:

Memorandum of propositions to Alvin May by Asa May and A. M. Sloan, relative to settlement of indebtedness:

The property subject to the mortgages and execution of the said May and Sloan is to be sold on the first Monday in January, 1874, under the executions against Alvin May. Unless there are other purchasers ready to bid the amount of Asa May's claim, he is to buy in the property for his own use.

If Asa May buys the property he agrees that if Alvin May and wife will relinquish all right and title, including her right of dower, to the property sold, that the Arendell plantation shall be given up to Alvin May, that Asa May will pay up or guarantee the payment of the balance due to Arendell's creditors on the Arendell place, the said amount not to exceed three thousand dollars at the present time, and that the said Asa May and Sloan will make no further claim to the said place, and will permit the title to rest in Alvin May or his wife.

Asa May and Sloan bind themselves to make no further personal claim upon Alvin May on account of the mortgage and judgment debts of theirs against him; Asa May agrees to let Alvin May have mules of those bought in, and bushels of corn, and pounds of fodder to enable him to work the Arendell place, the value of the
43 mules to be deducted from the $3,000. Alvin May is to give peaceable possession of the property as soon as possible, so as to enable Asa May to proceed at once to make his arrangements for the coming year.

Alvin May is to bring up a memorandum of all the property subject to the mortgage and executions against him, early on the morning of the sale, and is to get in as many as possible of the mules sold by him and not paid for or paid for only in part. The amount of three thousand dollars embraces the entire amount to be paid by Asa May, whether it is paid on the land, in mules, or in any other manner. Asa May agrees not to interfere with any bona-fide trades made by Alvin May so far as any of the mortgaged property is concerned, provided the trades have been carried out in good faith and completed.

Witness our hands and seals this fifth day of January, A. D. 1874.

ASA MAY. [SEAL.]
A. M. SLOAN. [SEAL.]
ALVIN MAY. [SEAL.]

Executed in our presence:
A. DENHAM.
S. PASCO.

I hereby certify that the foregoing is a true and correct copy of the original agreement.

A. DENHAM.

And the following is Exhibit I, mentioned above, to wit:

44 This indenture, made and entered into this the sixth day of January, A. D. 1874, by and between Sturges B. Baldwin, as

sheriff of Jefferson County, Florida, party of the first part, and Asa May, of said county, of the second part, witnesseth:

Whereas certain writs of fieri facias have come into the hands of the said party of the first part, issued out of the clerk's office of the circuit court in and for Jefferson and Leon Counties, and of Jefferson County court, directing & commanding him to make of the goods and chattels, lands and tenements of one Alvin May, of the said county, the following amounts, to wit: Upon a certain fi. fa. in favor of W. H. Stark & Company the sum of eight hundred and forty-five and $\frac{65}{100}$ dollars; upon another in favor of Sanders, Goodwin and Miller, the sum of five hundred & four & $\frac{52}{100}$ dollars; upon another in favor of James D. Morris, the sum of one hundred and fifty-four & $\frac{93}{100}$ dollars; upon another in favor of Asa May, the sum of five thousand eight hundred and ten and $\frac{40}{100}$ dollars; upon another in favor of A. M. Sloan and Company, the sum of thirteen thousand eight hundred and forty and $\frac{15}{100}$ dollars; and upon another in favor of William W. Miller, the sum of four hundred and ninety-nine and $\frac{75}{100}$ dollars, besides the costs of the said writs and of the proceeding thereon, the said writ in favor of James D. Morris having issued out of the county court in and for Jefferson County, the last named in favor of William W. Miller, out of the circuit court
45 in and for Leon County, and the others all out of the said circuit court of Jefferson County, in which said courts respectively the said judgments against the said defendant, Alvin May, are duly enrolled and docketed; and whereas under and by virtue of the said writs of fieri facias the said party of the first part levied the same upon certain property of the said defendant, including, besides certain personal property, the real estate hereinafter described; and whereas the said property was duly exposed for sale to the highest bidder before the court-house door in the town of Monticello, in the said county of Jefferson, on the first Monday and the fifth day of January, A. D. 1874, the same being a legal sale day; and whereas the said Alvin May did, prior to the said sale, by an instrument under his hand and seal executed in the presence of two subscribing witnesses, expressly waive the advertisement of the said sale required by the terms of the statute, the execution creditors assenting thereto; and whereas there were a large number of persons present at the said sale, and the said lands were put up in several lots and parcels, and all and every of the said lots and parcels were knocked off and sold to Asa May, the said party of the second part, at the price and sum of fifty cents per acre, he being the highest bidder at the said sale; and whereas the said party of the second part has paid the
46 amount of the said bids in the aggregate, the sum of one thousand five hundred dollars and twenty-five cents:

This indenture therefore witnesseth that in consideration as well of the premises as of the sum of one thousand five hundred and $\frac{25}{100}$ dollars in hand paid by the said party of the second part to the said party of the first part, at and before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, the said party of the first part has given, granted, bargained, and sold, and doth by this indenture give, grant, bargain, sell, convey, and confirm unto the said party of the second part, his heirs and assigns forever, the following-described lands, situated, lying, and being in the said county of Jefferson, to wit: In township one, range four south and east, in section one thereof, the west half of the southwest quarter; in section two, the south half; in section three, the west half of the northeast quarter, the northwest quarter, the east half of the southwest quarter, and the southeast quarter; all of section ten, except a part of the half of the northwest quarter, compris-

ing about fifty-one and a half acres remaining the property of Joseph Reid, who sold the balance thereof, comprising twenty-eight and one-half acres, to the said Alvin May; all of section eleven, except the east half of the northeast quarter; the west half of the northwest quar-
47 ter of section twelve; all of section fourteen lying north of the S't Augustine road, including two hundred and fifty-two acres, more or less; all of section fifteen, comprising in the aggregate three thousand acres and one-half, more or less, together wtih the tenements thereon, and all the privileges and appurtenances to the said land, being in the aforesaid township and range:

To have and to hold the said-described lands, with all the privileges and appurtenances thereunto appertaining and belonging, and all of the estate, right, title, and interest of the said Alvin May therein or thereto (he claiming a fee-simple title to all of said lands), as fully and completely as by law and by virtue of said writs I am authorized to do.

And the said party of the first part doth hereby covenant and agree to and with the said party of the second part, his heirs, executors, administrators, and assigns, that he has in all respects fully complied with the requirements of the law and the rules of the court in managing and conducting the said sale.

In testimony whereof the said Sturges B. Baldwin, party of the first part, as sheriff as aforesaid, has hereunto set his hand & seal on this the day and year first herein written.

STURGES B. BALDWIN, [SEAL.]
Sheriff of Jefferson Co., Fla.

Signed, sealed, and delivered in our presence.
R. B. WHITFIELD.
A. DENHAM.

48 Be it remembered that on this 16th day of November, A. D. 1874, personally comes before me S. B. Baldwin, to me known, who acknowledges that he executed and delivered the foregoing instrument freely and voluntarily, as and for the purposes therein stated, whereupon I do hereby admit the same to record, as witness my hand and the seal of the circuit court of Jefferson County, Florida.

[L. S.] A. B. GRUNWELL,
Clerk of said Court.

I hereby certify that the foregoing is a true and correct copy of the original deed between S. B. Baldwin and Asa May, recorded in deed-book N, pages 409 to 411, as witness my hand and the seal of the circuit court of Jeff. Co., Fl'a.

[L. S.] A. B. GRUNWELL, *Clerk*,
By JOHN GARWOOD, *D. C.*

And afterwards, to wit, on the 20th day of January, 1875, the following subpœna was filed, to wit:

The State of Florida to Asa May:

You are hereby commanded and strictly enjoined that, laying all other business aside, and notwithstanding any excuse, you personally be and appear before the judge of our circuit court for the county of Jefferson on the first Monday in February, 1875, next, wherever the court
49 may then be, to answer to a bill of complaint exhibited against

you in our said court by Andrew M. Sloan, and to do further and receive what our said court shall have considered in that behalf; and this you are not to omit, under a penalty of five hundred dollars.

Witness the honorable P. Woodson White, judge of our said court, this 14th day of January, A. D. 1875.

[SEAL.] A. B. GRUNWELL,
Clerk J. C. C.

Defendants are required to enter their appearance by the time specified at the clerk's office, or a decree will be taken against them pro confesso.

(Endorsed as follows:) Came to hand and service perfected by delivering a true copy of this writ, and at the same time exhibiting this writ. Jan. 14th, 1874.

S. B. BALDWIN, *Sheriff*,
P'r DEAN RAINS, *D. S.*

And afterwards, on the 30th day of January, A. D. 1875, the following appearance of the defendant was filed, to wit:

Second judicial circuit, Florida. In Jefferson circuit court.

ANDREW M. SLOAN
vs.
ASA MAY.

The defendant Asa May, by his solicitor and counsel R. B. Whitfield, appears generally in this cause, Feb'y 1, '75.

R. B. WHITFIELD,
Counsel for Def't.

50 And afterwards, to wit, on the fifth day of April, 1875, came the defendant, Asa May, by his attorneys, and filed his answer to the following bill of complaint, which answer is in the words and figures following, to wit:

The answer of Asa May, def'd't, to the bill of complaint filed in Jefferson circuit court, wherein Andrew M. Sloan is complainant and the said May is defendant.

This def'd't, now and at all times hereafter saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in said complainant's bill contained as though he had specially plead or demurred thereto, nevertheless, for answer thereto, or such parts or portions thereof as this def't is advised to be material for him to answer unto, answering, sayeth: That he admits, as stated in complainant's bill, that the said Alvin May, as therein stated, being indebted to this def't in the sum of fourteen thousand eight hundred and forty-eight $\frac{56}{100}$ doll's, executed and delivered to this def't eight promissory notes under seal, seven being for the sum of two thousand dollars each, and one for the sum of eight hundred and forty-eight $\frac{56}{100}$ dollars, payable in gold or its equivalent, and falling due on the first of January, 1869, 1870, 1871, 1872, 1873, 1874, 1875, & 1876, respectively. That to secure the payments of said notes, with the
51 interest thereon, the said Alvin May at the time of making said notes, and of even date with them, to wit, on the 21st January,

1868, executed and delivered to def't a mortgage on certain real and personal estate situated in the county of Jefferson, all of which will more fully appear by reference to a copy thereof filed with complainant's bill, marked Exhibit C, and which this defendant admits to be a correct and substantial copy.

And this defendant further admits that subsequent to the recording of said mortgage the said Alvin May executed and delivered to A. M. Sloan & Co. two mortgages on the real and personal estate of said Alvin in the county of Jefferson, and that the exhibits filed with compl't' bill marked A and B are, to the best of his knowledge and information, correct copies thereof, but whether they are still the property of A. M. Sloan & Co. or the individual property of complainant this def't has no knowledge save from the bill itself and the previous statements of complainant that the lands embraced in the mortgage of Alvin May to def't are also conveyed in the m'tg'e of the said Alvin to complainant, together with other lands not included in the m'tg'e to def't, as stated in the bill of complaint.

And this def't further admits that on the eighth day of May, 1873, he obtained judg't against the said Alvin May in Jefferson
52 circuit court, being for part of the indebtedness still remaining unpaid on his said m'tg'e, at which time a judg't was also rendered in favor of A. M. Sloan & Co., as stated in complainant's bill, all of which will more fully appear by reference to Exhibits marked D and E filed with complainant's bill, and which this def't admits to be substantial and correct copies.

And this defendant further answering saith that the lands levied on by virtue of said executions were those embraced in the mortgage of defendant; that the lands included in the mortgage to A. M. Sloan & Co. other than those specified in the m'tg'e of def't were not levied on, the lands thus levied on being only those upon which this def't held a prior mortgage lien. That the said Alvin May, being desirous of saving costs and expenses, by his agreement in writing, under seal, dated the eighth day of October, 1873, waived the advertisement of sale, and therein consented that the sale should take place on the first Monday in December, 1873, unless postponed by the consent of the parties; that said sale did not take place on the first Monday in December, 1873, but was postponed to and took place on the first Monday in Jan'y, 1874, to wit, the fifth of said month of Jan'y, to which the said Alvin May, by his written agreement under seal of that date, also assented; all of
53 which will more fully appear by reference to copies of said agreements, marked A and B, herewith filed, and prayed to be taken as part of this answer.

And this defendant, further answering, saith that at the time of said sale the sum remaining unpaid on the mortgage debt of the said Alvin May to this def't amounted in the aggregate to the sum of thirteen thousand two hundred and ninety-three $\frac{55}{100}$ dollars, including the judg't before referred to and the then remaining m'tg'e notes not sued on, with the interest thereon, respectively. That, being desirous of avoiding further expense and delay, and having a final settlement of the entire mortgage indebtedness in such manner as should be satisfactory to all parties, this def't entered into a written agreement with the said Alvin May on the fifth of Jan'y, 1874, immediately before the sale, to which said agreement complainant was also a party, a correct copy of which, marked Exhibit H, is filed with the complainant's bill. That by the terms thereof the property was to be sold under the fi. fa's, the said Alvin May to bring up early on the morning of sale a memorandum of all the

property subject to the ex'c't'ns and mortgages, and to get in as many as possible of the mules sold by him and not paid for,
54 or paid for only in part. That if no other persons were ready to bid the amount of def't claim, then the def't was to buy in the property for his own use; that in the event of this def't becoming the purchaser the said Alvin and his wife were to relinquish all right and title to the property, including her right of dower, and give to def't speedy possession of the premises, in consideration of which this def't agreed to pay a certain am't, not to exceed three thousand dollars, to the creditors on the Arendell place, from which amount was to be deducted the value of the mules or other property which this def't agreed said Alvin should have in accordance with said agreement; in addition to which other releases were made by defendant and complainant, all of which will more fully appear by reference to said Exhibit H.

And this def't, further answering, saith that the sale under the exec't's was made on the first Monday of Jan'y, 1874; that no person being ready to bid the am't of his claim, he became the purchaser of the lands and a portion of the personalty, and the proceeds were applied to the pay't of said ex'c't'ns, in manner and form as will more fully appear by reference to a copy of the sheriff's return, marked Exhibit C, herewith filed and prayed to be considered as a part of this answer.

And this defendant, further answering, states that immediately
55 after his purchase as aforesaid, and before their removal from the plantation of the said Alvin, fourteen of the mules, two horses, and some other property were taken and retained by the said Alvin and disposed of by him, some of which said property went into the hands of the complainant, but by no act or assent of this def't. That, in the hurry and confusion incident to going into possession of his purchase, this def't was less particular and careful in coming to a complete understanding of the minor details than he possibly should have been with other parties, knowing that all such matters as were left open could be adjusted upon a final settlement between the complainant, the said Alvin May, and himself, which settlement has never yet been had, this def't at that time having entire confidence in complainant's integrity. But this def't avers that he never meant or intended by any act of his, or by any failure to act on the day that he took possession of the property, or at any other time, to surrender to the said complainant Sloan any right, claim, or title he had acquired in his entire purchase or any part thereof.

And this def't, further answering, saith that the value of lands has so greatly depreciated that the mortgaged property on which he had
56 a prior lien was insufficient to pay the existing m't'ge indebtedness, yet he was willing to take the same and release all further claims upon the said Alvin; and it was with this view this def't entered into the agreement of the fifth of Jan'y, 1874, by the terms of which, if def't became the purchaser at the sale, though at a less amount than the mortgage called for, his debt against the said Alvin was to be released and deemed satisfied. And this defendant denies that there was any agreement or understanding between him and complainant that he was to convey any portion of the property so purchased as aforesaid to the claimant, or was to hold it for his use or benefit; but, on the contrary, avers that he made the purchase for his own use and benefit, untrammeled with any conditions or agreements whatsoever. That the agreement of the 13th of Dec'r, 1873, a copy of which, marked Exhibit F, is filed with complainant's bill, was a contract for the sale of certain property therein specified, entered into by complainant and the said Alvin, to which this def't was neither a party or privy, and is neither

legally or morally bound to carry out; that he neither at the time or subsequently assumed any such liability, nor has any consideration to do so ever been received by this def't. And this def't denies that

57 the last clause of the agreement of the fifth Jan'y, 1874, was inserted at the instance of the complainant for the purpose of satisfying the agreement of the 13th of Dec'r, 1873, and enforcing compliance therewith by this def't, but on the contrary avers that it was inserted for the protection of the said Alvin; that by the terms of the agreement of the fifth of Jan'y as many as possible of the mules that had not been paid for, or only paid for in part, were to be brought up on the day of sale, but such of the m'tg'ed mules or other property as had been paid for in full and delivered were not to be held subject to the m'tg's, "the trades having been carried out in good faith and completed." The agreement between complainant and the said Alvin was not carried out and completed then, nor even up to this time, and the claim set up by the complainant, stripped of its sophistry, is both unreasonable and inequitable, and though this def't is related to said Alvin and his personal friend, as stated in complainant's bill, yet he and no other person outside of a lunatic asylum could be expected to give three thousand dollars for the privilege of paying twenty-one thousand dollars or other large am't of the indebtedness of said Alvin to third parties, as would be the inevitable result should the construction made by complainant of the clause in the agreement of the fifth of Jan'y, 1874, be allowed.

58 And this def't, further answering, saith that complainant was present and had the right and did bid for a portion of the property sold, this def't having no interest in preventing him, but being desirous that the property should bring the highest price, and became the purchaser because no other party was willing to bid higher, and his own interest was to make the property bring the am't due on his m't'ge, or bid it in for his own use or benefit. That he subsequently proposed to complainant that if he thought the property should have sold higher he would consent to have it resold, which offer was declined by complainant.

And this def't, further answering, saith that the lands embraced in complainant's m't'ge, and not included in def'ts, were subject, as this def't is informed and believes, to m't'ge and judgment liens of older date than his m't'ge, and for a larger am't than the value of the lands. That the mortgage as far as the Arendell place was concerned was a nullity, the said Alvin never having any title thereto, and his release of his m't'ge lien by the agreement of the fifth Jan'y, 1874, was therefore valueless, and, as stated in the bill, "but an idle ceremony."

59 And this defendant, further answering, saith that he still owns the lands so purchased as stated; that during the past year he has cultivated a portion of the land so purchased and now claimed by complainant, and known as the Long place, not by virtue of any consent or agreement with complainant, but as the owner thereof; that a small portion thereof was cultivated by complainant, this def't not objecting thereto, as there was more land than he required for his own use, and under the supposition that compl't would be willing to pay a fair and reasonable rent when they should come to a final settlement, this def't having at the time complete confidence in complainant, having had large business transactions with him for a series of years, some of them still remaining open and unsettled, finding that there was more land on the tract than was convenient for this def't to cultivate, he having other large planting interests, about the middle of Sept'r he wrote

to complainant to ascertain what am't of the land he desired to rent the ensuing year, in order that he might rent to other parties all that complainant did not need, when, for the first time, and to his utter surprise, he was informed of the preposterous claim set up by complainant, and that this def't was bound to convey to complainant, without consideration, a portion of the land he had taken in satisfaction of his
60 debt, though not of equal value, in order that the said Alvin might receive a credit of twenty-one thousand dollars upon a debt alleged to be due from the said Alvin to the mercantile firm of A. M. Sloan & Co.

And this def't, further answering, saith that he did not make the purchase in order to make a speculation, but simply for the purpose of collecting a just and acknowledged debt; that he has heretofore offered to convey the property purchased as aforesaid upon the paym't of the am't due on his m't'ge; that all the lands so purchased, with the exception of about 160 acres, claimed and by decision of arbitrators duly appointed awarded to H. C. Bailey and wife, are still his property; that by the repairs and improvements placed upon them since his purchase they are greatly enhanced in value, yet he is still willing, as heretofore, and hereby now proffers to convey all the property purchased at said sale to complainant, or any person he may desire, upon the paym't of the am't due upon his m't'ge at the time of said sale.

And this def't, further answering, saith that exhibits A to I, inclusive, filed with compl'ts bill, are correct, to the best of his knowledge and belief; that the agreement of the fifth of January, 1874, is in the hands of Sam'l Pasco, esq.; that the agreement of the 13th Dec'r, 1873, is also in the hands of the same party, as this def't is informed and believes.

61 And this def't, having fully answered, traversed, and denied the allegations in complainant's bill, hereby prays to be hence discharged with his reasonable costs and charges in this behalf most wrongfully sustained.

STEPHENS & LOVE,
Sol's, & of Counsel for Defendant.

Personally appeared before me, Asa May, def't in foregoing answer, who, being duly sworn, saith the matter and things therein stated of his own knowledge are true, and those stated as derived from the information of others he believes to be true.

ASA MAY.

Sworn to & subscribed before me this 15th day of March, 1875.
M. J. TAYLOR, *Clerk*,
By A. B. GRUNWELL, *D. C.*

And the following is Exhibit A, as mentioned above, to wit:
(This exhibit withdrawn, a correct copy being already filed with complainant's bill.)

And the following is Exhibit B, mentioned above, to wit:

STATE OF FLORIDA,
County of Jefferson:

Know all men by these presents that I, Alvin May, of said county and State, in accordance with the understanding and agreement heretofore entered into by me, and for the purpose of saving expenses and

costs, have waived, and do hereby waive, the advertisement re-
62 quired by law in cases of sales of property under execution, and do hereby consent and agree to the sale of all my property, as if the same had been regularly advertised, and do hereby fully authorize and empower S. B. Baldwin, sheriff of Jefferson County, Florida, to proceed to the sale of my said property as if it had been regularly advertised, and to appropriate the proceeds to the satisfaction of the said executions in his hands.

Witness my hand and seal this fifth (5th) day of January, A. D. 1874.

ALVIN MAY. [SEAL.]

Executed in our presence.
W. B. LAMAR.
JA'S S. RUSSELL.

And the following is Exhibit C, mentioned above, to wit:

MONTICELLO, FLA., *Jan'y 6th*, 1874.

Under and by virtue of eight writs of fieri facias, six of which were issued out of Jefferson circuit court and two out of Jefferson County, in which W'm B. Miller, John H. Earle; Smallwood, Hodgkins & Co.; Asa May, A. M. Sloan & Co., W. H. Stark & Co., J. D. Morris, and J. T. Budd are plaintiffs, and Alvin May is def't, I levied upon the following described real estate: Picolata place, 600 acres, more or less; Asa May place, 1,280 acres, more or less; Alvin May place, 1,000 acres, more or less. Also the following described personal property, to wit: Thir-
63 teen horses and mules, named, respectively, Black Snake, Beck, Henry, 1 black horse, 1 mouse-colored, Kate, Mary, Frank, Ned, Pete, Elvira, 1 pony, and one mare. Also, 1,500 bushels of corn on Home place, more or less; 1,000 bushels of corn on Arendell place, more or less; 3,000 pounds of fodder, more or less, on same place; 1,000 lbs. of fodder, more or less, on Home place; three two-horse wagons, 1 six-horse, 1 four-horse, and one log wagon, 1 cotton-gin and band, 2 one hundred gallons sugar kettles, three cows and calves, twenty head of hogs, 1 buggy and harness, levied upon as the property of defendant. And whereas, there being a mutual consent of parties that the above-mentioned property should not be advertised, but be sold before the court-house door in the town of Monticello, Fla., by the sheriff of Jefferson County, the same as if it had been duly advertised according to law: Therefore, I, S. B. Baldwin, sheriff of Jefferson County, did, on the first Monday in January, A. D. 1874, offer for sale, before the court-house door in the town of Monticello, the above described property, for the purpose of satisfying said writs of fi. fa. The land was knocked off to Asa May, he being the highest bidder, bidding the sum of fifty cents per acre.

3,000	acres of land,	Asa May,	at 50 cts		1,500 00
1 mule,	Black Snake,	"	"		100 00
	1 mule, Beck,	"	"		135 00
64	1 " Henry,	Asa May,	at		155 00
	1 " Elvira,	"	"		150 00
mule,	John,	"	"		83 00
1 "	Frank,	"	"		143 00
1 "	Jerry,	"	"		135 00
1 "	Ned,	"	"		50 00
1 "	Pete,	"	"		155 00
1 pony,		"	"		155 00

1 mare, " "	45 00
748 bushels on Home place, to R. B. Whitfield, at 80 c	593 60
722⅔ " Arendell place, 50 cts. "	365 66
13,000 lbs. fodder, A. M. Sloan, 50 cts	65 00
1 four-horse wagon, " "	50 00
1 cotton-gin & band, " "	25 00
2,100 gal. sugar kettles	20 00
3 two-horse wagons, at $55 each, Asa May	165 00
1 six-horse wagon, " "	52 00
1 log cart, " "	25 00
1 sugar mill, " "	25 00
1 buggy and harness, " "	55 00
3 cows & calves, to S. Seymour	45 00
20 head of hogs " "	20 00
	$4,212 76

Under the agreement of the parties, the proceeds of the sale were disposed of as follows: The proceeds of the lands, mules, plantation implements, &c., amounting to three thousand and thirty-three dollars, were paid over to Asa May, he having a prior lien of an earlier
65 date than his ex'c'n, to wit, a mortgage executed Jan. 21st, 1868; the proceeds of the corn and fodder, amounting to one thousand two hundred and fifty-nine and $\frac{46}{100}$ dollars, were paid over to A. M. Sloan, he having a superior lien to the same for advances under the statutes in such cases provided, proved by a written instrument consenting to such lien, executed by the said Alvin May to A. M. Sloan, April 7th, 1873, and recorded in deed book W, page 89 & 90.

Jan'y 6, 1874.

S. B. BALDWIN,
Sheriff Jeff. Co., Fla.

And afterward, on the 26th day of April, A. D. 1875, the complainant filed his replication to the defendant's answer, in the words and figures following, to wit:

Circuit court of the 2nd judicial circuit of Florida, in and for Jefferson County. In chancery.

ANDREW M. SLOAN }
vs.
ASA MAY. }

The replication of Andrew M. Sloan, complainant, to the answer of Asa May, defendant.

This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiences of said answer, for replication thereunto saith that he will aver and prove his said bill to be true, certain, and sufficient in law to be answered
66 unto, and that the said answer of the defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this that any other matter or thing whatever in said answer contained, material or effectual in law to be replied unto, confessed and avoided, traversed or denied, is true. All of which matters and things this repliant is and will be ready to aver and prove as this honorable

court shall direct; and humbly prays as in and by his said bill he has already prayed.

PAPY & RANEY,
Sol's, & of Counsel for Complainant.

And afterwards, to wit, on the 13th day of July, 1875, the following notice was filed to wit:

In Jefferson cir. court. In chambers.

A. M. SLOAN
vs.
ASA MAY.

GEN'T'N: You will please take notice that interrogatories for Asa May and Samuel Pasco, witnesses residing in the county of Jefferson, to be examined in behalf of def't, have been filed in the office of the clerk of said court, to which you can file your int'g's within ten days from service hereof if you think proper. And commission will issue in accordance with statute in such case made and provided.

July 9th, 1875.

STEPHENS & LOVE.
Sol's and Counsel for Def't.

67 PAPY & RANEY,
Sol's for Comp't, Tallahassee.

I hereby certify that I did this day deposit in the post-office, in a sealed envelope addressed to Mess. Papy & Raney, Tallahassee, Fl'a, a true copy of the foregoing notice, at Monticello, Florida, and paid the postage thereon.

July 13, 1875.

R. B. WHITFIELD.

(Endorsed as follows:)

Fo. 147. Jeff. c't c't, Fl'a. In chancery. A. M. Sloan vs. Asa May Notice of filing int'r'g's. Filed July 13th, 1875.

M. J. TAYLOR, *Clerk.*

Came to hand July 14th, A. D. 1875.

S. L. TIBBETTS, *D. S.*

Executed the within by delivering a true copy thereof to Geo. P. Raney, at Tallahassee, Fl'a, this the 16th day of July, A. D. 1875.

P. L. DECOURSEY, *Sheriff.*
By S. L. TIBBITTS, *D. Sheriff.*

Copy 50 'cts; service 50—1.00.

And on the same day the def't filed the following interrogatories, in words and figures as follows, to wit:

STATE OF FLORIDA,
Jefferson County:

Interrogatories to be propounded to Asa May and Sam'l Pasco, witnesses residing in the county of Jefferson and State aforesaid, and to be
68 read in evidence in a certain chancery cause now pending in Jefferson circuit court wherein A. M. Sloane is complainant and Asa May is defendant, for and in behalf of said def't:

Intg. 1st. Do you know the parties, or either of them, and how long?

Intg. 2d. Was there or not any agreement between Asa May and A. M. Sloan, or Alvin May, or either or both, that Asa May was to convey any portion of the land purchased by him at the sh'ff sale on the exc't'n vs. Alvin May, in Jan., 1874, to said Sloan, or hold the same in trust for said Sloan?

Intg. 3d. Did Sloan express any dissatisfaction with the purchase so made by May; if yea, when? Did or did not May at any time proffer to Sloan to have the property resold if he so desired, and was said proffer accepted or declined by Sloan?

Intg. 4th. Did or did not Asa May agree to release any property from the lien of his said mortgage; if so, what property, and under what circumstances?

Intg. 5th. Is or is not Alvin May the owner of the Arendell plantation; if yea, from whom did he purchase, were title deeds executed for the same, and to whom and by whom?

69 Intg. 6. What was the am't due on the mortgage of Alvin May to Asa May at the time of the said sh'ff's sale?

Intg. 7. Were there or were there not any liens on the lands included in the Sloan mortgage which have priority over the same? If yea, please state their character and amount.

Intg. 8. Did or did not Sloan receive any portion of the money arising from the sale under the execution before referred; if yea, what amount?

Intg. 9. Did or did not Asa May ever adopt, in any manner, the agreement between Alvin May and A. M. Sloan bearing date the 13th Dec'r, 1873, and agree to carry out and be bound thereby?

Intg. 10. Was there or was there *or was there* not any agreement entered into between Asa May and Sloan whereby he, Sloan, was prevented from bidding for the property sold under said execution?

Intg. 11th. Was or was not Sloan allowed to occupy a portion of the land purchased by Asa May at said sale; if yea, what portion, when, and under what circumstances?

Intg. 12th. In the agreement entered into by Asa May and Sloan and Alvin May, on the 5th Jan'y, 1874, was or was not any reference made to the agreement between Alvin May and Sloan of the 13th

70 Dec'r, 1873, and for what purpose, under what circumstances, and at whose instance was the last clause in the agreement of 5th Jan'y, 1874, inserted?

Lastly. If you know anything further for the benefit of either party touching the matters in dispute, please state the same fully and at large.

STEPHENS & LOVE,
Sol's for Def't.

And afterwards, to wit, on the 26th day of July, 1875, the following order, extending time for taking testimony, was filed:

Circuit court 2d judicial circuit of Florida, in and for Jefferson County.
In chancery.

ANDREW M. SLOAN
vs.
ASA MAY.

Upon motion of George P. Raney, the solicitor for complainant, and Stephens & Love, the defendant's solicitors, consenting thereto, it is ordered that the time for taking the testimony in this cause is extended

for the period of two (2) months from this date. Done and ordered at chambers this the 17th day of July, A. D. 1875.

P. W. WHITE,
Judge Circuit Court 2nd Judicial Cir., Florida.

71 And on the same day, the following notice, in words and figures as follows, to wit, was filed:

Circuit court 2nd judicial circuit of Florida, in and for Jefferson County. In chancery.

ANDREW M. SLOAN
vs.
ASA MAY.

To Mess. Stephens & Love, sol. for def't:

You will please take notice that the complainant, A. M. Sloan, desires that Samuel Pasco and Asa May, witnesses proposed in this cause by the defendant, and Andrew M. Sloan, W'm Tabb, W'm H. Floyd, Alvin May, and Cha's Sloan, witnesses whom the complainant now proposes as witnesses, shall be examined orally and without written interrogatories, and that the complainant will, this afternoon at four o'clock, at Quincy, Florida, apply to the Hon. P. W. White, judge of the circuit court 2nd judic. cir. of Fla., for an order directing that they be so examined, and appointing an examiner for such purpose.

July 19, 1875.

GEO. P. RANEY,
Sol. for Comp't.

Also, upon the same day, the following order appointing examiner was filed, to wit:

72 Circuit court, 2nd judicial circuit of Florida, in and for Jefferson County. In chancery.

ANDREW M. SLOAN
vs.
ASA MAY.

This cause coming on, it is ordered that Samuel Pasco and Asa May, witnesses proposed by the defendant, and Andrew M. Sloan, William Tabb, William H. Floyd, Alvin May, and Cha's Sloan, witnesses proposed by the complainant in this cause, shall be examined orally and without interrogatories; and it is further ordered that Tho's L. Clarke be, and is hereby, appointed examiner to take the testimony of said witnesses, and directed to take the testimony of said witnesses orally and without written interrogatories, at such time and place as he may select, giving the solicitors to the parties to the cause notice to attend and interrogate said witnesses. Done and ordered this the 19th day of July, A. D. 1875.

P. W. WHITE,
Judge Cir. Ct., 2nd Judicial Cir., Fla.

And on the 10th of Sep., 1875, the following præcipe for witnesses was filed, to wit:

Circuit court, 2nd judicial circuit of Florida, in and for Jefferson County.
In chancery.

73 ANDREW M. SLOAN
vs.
ASA MAY.

The clerk of circuit court, Jefferson County, will please issue subpœnas for the following witnesses of the complainant in above cause, to wit: William Tabb, W'm H. Floyd, Alvin May, Andrew M. Sloan, Charles Sloan to testify in the above cause before Thomas L. Clarke, the examiner herein, at Monticello in said county, on the 15th day of September, A. D. 1875, at ten o'clock a. m.

GEORGE P. RANEY.

And on the 14th of September, 1875, the following subpœna was filed, to wit:

Subpœna.

Circuit court.

The State of Florida to W'm Tabb, W'm H. Floyd, Alvin May, Andrew M. Sloan, Charles Sloan, greeting:

We command you to appear before T. L. Clarke, examiner in this cause, at the court-house in Montecello, on the 15th day of September, A. D. 1875, to testify and the truth to say in behalf of the complainant in a certain matter of controversy between Andrew M. Sloan, compl't, and Asa May, defendant.

And this you shall in nowise omit.

Witness M. J. Taylor, clerk of our said court, this 10th day of September, A. D. 1875.

[SEAL.] M. J. TAYLOR, *Clerk.*

74 (Endorsed as follows:)

Came to hand September 14th, 1875, and served the within by handing a true copy thereof to each of the within named parties, W'm Tabb, W'm H. Floyd, Alvin May, Charles Sloan, all of said county, and at the same time exhibiting the original this 14 day of September, A. D. 1875.

S. B. BALDWIN, *Sheriff*,
By DEAN RAIN, *D. Sheriff.*

Executed by serving a copy of the within on the said A. M. Sloan, at the same time exhibiting the original this 14th day Sept., A. D. 1875.

S. B. BALDWIN, *Sheriff*,
P'r J. W. JORDAN, *D. S.*

And on the same day the following order extending time for taking testimony was filed, to wit:

Circuit court 2d judic. circuit of Florida, in & for Jefferson County. In chancery.

ANDREW M. SLOAN
vs.
ASA MAY.

By consent of counsel for the complainant and defendant it is ordered that the time for taking the testimony in this cause be and the same is hereby extended to the twenty-eighth (28th) day of the present month, including the same. Done and ordered at chambers, this the sixth day of September, A. D. 1875.

P. W. WHITE,
Judge Circuit Court 2nd Judic. Cir. of Florida.

(Endorsed as follows:)
We consent to the within order, Sept. 6th, 1875.
GEORGE P. RANEY,
Sol. for Comp't.
STEPHENS & LOVE,
Sol's for Defendant.

And the following order was issued on the 15th of September, 1875, to wit:

Jeff. cir. court, State of Florida.

MONTICELLO, FLORIDA, *Sept. 15th*, 1875.

The within order is extended to the taking of testimony of any other witnesses either party may offer within the time limited. Ordered at chambers this 15th of Sept'r, 1875.

P. W. WHITE, *Judge.*

And the following order was filed on the 28th Sept., 1875, to wit:

Circuit court 2 judicial circuit of Florida, in & for Jefferson County. In chancery.

ANDREW M. SLOAN
vs.
ASA MAY.

By consent of solicitors for both parties it is ordered that the time for taking the testimony in the above cause be and the same is here-
76 by extended for the purpose of taking the testimony of Alvin May, a witness for complainant, and until the same shall have been taken. Done and ordered at chambers this 21st day of September, A. D. 1875.

P. W. WHITE,
Judge Cir. Court 2nd Judicial Cir. of Florida.

And on the 25th day of Sept., 1875, the following affidavit of S. B. Stephens was filed, to wit:

STATE OF FLORIDA,
Gadsden County:

Personally appeared before me S. B. Stephens of counsel for def't who

being sworn, saith that he is informed and believes that A. M. Sloan, compl't in the bill of compl't of A. M. Sloan vs. Asa May in Jefferson circuit court, is seeking to enforce the collection of rents on the lands in dispute, and unless prevented by order of this court that trouble, if not violence, will ensue therefrom.

S. B. STEPHENS.

Sworn to and subscribed before me this 24th Sept., 1875.

P. W. WHITE, *Judge.*

And on the same day the following order of injunction and appointing receiver was filed, to wit:

2nd judicial circuit, Jefferson circuit court. In chancery.

77 ANDREW M. SLOAN, COMPLAINANT,
vs.
ASA MAY, DEF'T.

In this case it being shown to the court that the parties thereto are claiming and seeking to collect the rents due on the lands in dispute before the adjudication of their rights before the court, it is ordered and adjudged that both complainant and def't be enjoined from the collection of said rents until the further order of this court, and it is further ordered and decreed that W'm P. Marvin, master in chancery, do proceed to collect said rents and hold the same until the rights of the parties shall be determined upon the hearing of this cause or until the further order of this court. Done and ordered at chambers this 24 of September, A. D. 1875.

P. W. WHITE,
Judge 2nd Judicial Circuit of Florida

(Endorsed as follows:) I acknowledge due and legal service of the within order this September 25, 1875.

ASA MAY.

Came to hand and executed the within by delivering a true copy thereof to C. A. Sloan, the agent of A. M. Sloan, at Monticello, Florida, this September 25th, 1875.

S. B. BALDWIN, *Sheriff.*
J. W. JORDAN, *D. S.*

And on the 10th day January, A. D. 1876, the following tes-
78 timony was filed, to wit:

In the circuit court of the second judicial circuit of Florida in & for Jefferson County. In chancery.

ANDREW M. SLOAN
vs.
ASA MAY.

To his honor P. W. White, judge of said court:

The undersigned having been appointed examiner by an order of this honorable court, bearing date the 19th day of July, A. D. 1875, to take and report the testimony of the witnesses for the complainant and defendant in the above-stated cause, begs leave to report that in obedience to the said order he gave the requisite notice to the counsel of the

respective parties, and was attended by them and their several witnesses at the several times and places mentioned, and herewith submits the testimony of said witnesses and copies of the papers and documents introduced as evidence and referred to by them in their evidence.

All of which is respectfully submitted.

Monticello, Fl'a, Jan'y 10th, 1876.

T. L. CLARKE,
Examiner.

Second judicial circuit of Florida, in Jefferson circuit court. In chancery.

ANDREW M. SLOAN
vs.
ASA MAY.

79 Having been appointed examiner to take testimony in the above cause under an order made therein on the 19th day of July, A. D. 1875, I gave notice to the solicitors for the respective parties that I would proceed on this 8th day of September, A. D. 1875, at Monticello in said county, to take the testimony of the witnesses named in said order, a copy of which notice is hereto annexed, marked A. By consent of Geo. P. Raney, solicitor for complainant, and Mess. Stephens & Love, solicitors for def't, the taking of said testimony is adjourned to the 15th day of September, A. D. 1875, at Monticello aforesaid at 10 o'clock a. m.

T. L. CLARKE,
Examiner.

MONTICELLO, FL'A, *Sept. 15th*, 1875.

Pursuant to adjournment, I attended at my office at this place this day for the purpose of taking testimony.

Present, Geo. P. Raney, esq., solicitor for complainant, and Mess'rs Stephens & Love, solicitors for def't.

ANDREW M. SLOAN, complainant, being introduced as a witness for complainant, after being duly sworn testifies as follows:

In the winter and spring of 1873 M'r Asa May and myself consulted frequently as to the best mode of making our money out of M'r Alvin May, and we came to the conclusion that the best way was to foreclose our mortgages, as there was no hope of M'r Alvin May's paying
80 the money except by a sale of his property; that he would be unable to work it out. M'r Asa May and myself went to see Col. Pasco, and he concluded to take the judgements mentioned in complaint. M'r Pasco was attorney for us both. I was at this time individual owner of, and holder of, the notes and mortgages given by Alvin May to A. M. Sloan & Co. About last of November or first of December, 1873, I made this proposition to M'r Asa May, "Let us put Alvin May on the McCain place, and let him have mules to cultivate it, and for M'r Asa May to take charge of the lands known as the Asa May old home place, the Long place, and the Pecolata place, and place any man he thought proper to control labor and manage the plantation on said places, and he, Asa May, to receive $2,000.00 of the net proceeds annually until his debt was paid, and the overplus, if any, to be put upon my claim." M'r May declined this proposition, and remarked that whatever he had he preferred having exclusive control of it. Before

this proposition was made M'r Alvin May had been complaining of complain't and def't, charging that they were going to break him up. After M'r Asa May declined this proposition I went to see M'r Alvin May to ascertain what compromise could be made with him that would
81 be satisfactory to M'r Asa May. M'r Alvin May and myself then entered into the agreement of 13 of December, 1873, marked "Exhibit F," and filed with complainant's bill. I went immediately into possession of the lands mentioned in said agreement, except the houses, which were to be delivered to me on 1st of January, 1874, or sooner if possible. I commenced sowing oats on the land on 1st, 2nd, or 3d of January before the sale. When witness made this agreement with M'r Alvin May he was aware of the existence of the agreement of 28th of October, 1873, signed by Alvin May, marked "Exhibit G," and filed with complainant's bill. My execution was one of the executions included in that agreement. No sale took place on the first Monday in December, 1873, but it was postponed by consent until the first Monday in January, 1874.

(Witness was here shown the agreement of January 5th, 1874, between complainant, def't, and Alvin May marked Exhibit H to complainant's bill.) On the morning of the 5th of January, when M'r Asa May came into Monticello before the sale took place, we, M'r Asa May, myself and Alvin May went into M'r Pasco's office. M'r Pasco then took us into the back room. M'r Pasco then read to us the agreement of January 5th, 1874, and when it was read I objected to it, because it did
82 not protect me in the lands and personal property, which I was to have under the agreement of December 13th, 1873. Whereupon, upon my making this objection, the last clause in the agreement of January 5th, 1874, was added, and then this agreement was signed by all three of us.

Question by complainant's solicitor. When you signed the agreement of January 5th, 1874, what consideration did you understand you were to have for so doing?

(Defendant's counsel objects, on the following ground, that the instrument itself is the best evidence, and it is not competent to contradict a written instrument by oral testimony.)

The consideration I understood I was to have was the land and property mentioned in the agreement of December 13th, 1873. I would not have signed that agreement, if such had not been my understanding. M'r Pasco, M'r Asa May, M'r Alvin May and myself were present when I made the objection to the agreement of January 5, 1874, which resulted in the addition of the last clause. The agreement of December 13, 1873, and all the papers were there.

Question by complainant's solicitor. Was there any agreement by you and M'r Asa May by which you were to get titles to property mentioned in agreement of Dec. 13, 1873?

(Def't's counsel objects, on the ground, that the question tends to contradict a written instrument by oral testimony, and set up a contract entirely different from the written contract.)

83 Answer. M'r Asa May was to bid in the property at the sale, and afterwards was to make me title to the property named in the agreement of Dec. 13, 1873. M'r Asa May bid in the property except the corn, and fodder, and other articles mentioned in Exhibit C to def't's answer, which I bid in. On the 6th of January, 1874 (I think), M'r Asa May delivered to me 6 mules, the corn and fodder he bought at the sale and the two wagons mentioned in the agreement of 13th December, 1873, were delivered to me at same time. M'r Asa May was

aware of what I was to have, and to arrive at an equitable division of the mules, M'r Asa May had them appraised by M'r W'm A. Tabb & Frank Russell. The appraisement and delivery was a day or two after the sheriff's sale. This was a part of the property sold at that sale. This appraisement and delivery were made in the horse lot on the Asa May old homestead place, which M'r Asa May had bid in at sale on the 5th of January, 1874. Mess. Alvin May, Asa May, the said appraisers and myself were present at the time. I sent the said six mules and wagons down to my "Scuffle Place" the same day; I subsequently sold the said six mules, & corn, & fodder to M'r Asa May. I have been paid in part for the corn and fodder. I was paid for the mules between the 5th & 10th of February, 1875.

84 (Counsel for complainant handed witness the paper hereto attached, marked Exhibit B, purporting to be a certified copy of a judgment, declaration and account sued on in circuit court of United States for 5th circuit and northern district of Florida, in an action of assumpsit, wherein the complainant in this suit was plaintiff and the defendant herein was defendant, which is received in evidence, and filed.)

The mules named in Exhibit B are the same six mules which M'r Asa May delivered to me, and which I afterwards sold to him. M'r May has paid this judgment. The sale of January 5th, 1874, took place in Monticello, and the corn referred to was not in Monticello at said sale, but in a crib on the said "Asa May homestead place." I still own the said two wagons. I have never received any title to the lands claimed in the complaint. In September, 1874, I applied to M'r Asa May to make me title to said lands, but he said he would not. I also asked him if he would pay me for the six mules, and he refused. This was before I commenced suit in U. S. court to recover the value of the mules. M'r Asa May delivered me the said six mules and two wagons, and the corn and fodder under the agreements of 13th December, 1873, and fifth January, 1874. I have been in possession of the lands mentioned in the agreement of 13th of December, 1873, ever since I first

85 went in possession under that agreement as before stated. About 10th of January, 1874, M'r Asa May came to me and said he had been renting lands to the hands, and was selecting the best hands that had been tending lands on that place for Alvin May, and was renting to them on same terms; and stated that July and Ben. Seymour wanted land to cultivate and that he could not let them have it, and asked me if I would let them go over on my land on the same terms, that is, paying ¼ of the corn and cotton they might produce. When I say "my lands," I mean the lands mentioned in the agreement of 13th of December, 1873. The reason why I did not apply to M'r Asa May for a title to the lands before September, 1874, was, that we were on very friendly terms with each other, and M'r May was on an appeal bond for $6,000.00 for me and I wished him to be amply secure against any loss he might sustain in consequence of such suretyship. The understanding between M'r Alvin May and myself was that the sheriff sale provided for in the agreement of December 13th, 1873, should take place on 1 Monday in January, 1874. I positive that prior to the sale that I had talked with Asa May in reference to my agreement with Alvin May of Dec. 13th, 1873, and that M'r Asa May knew what I was to get by the same, and was willing to the same and never made

86 any objections to the same. M'r Asa May knew that when the agreement of 5th of January, 1874, was signed. I have never had possession of the houses on the lands mentioned in the agreement of 13th

December, 1873. The 160 acres on which they stand was found to belong to M'r's H. C. Bailey. The agreement of 13th of December, 1873, between myself and M'r Alvin May, was written by M'r Samuel Pasco; he drew all the writings. The first notification I had of M'r Asa May's claiming the lands in question was September, 1874, when he wrote and asked me how much of the land I would want to cultivate the following year, as he wished to have as much cultivated as possible to pay taxes. I have never been called on by the sheriff to settle for the property, which Exhibit C to defendant's answer reports to have been bid in by me, as everything sold was turned over to M'r Asa May to enable him to carry out the agreements made prior to the sale.

A. M. SLOAN.

Sworn to and subscribed before me Sept. 15, 1875.

T. S. CLARKE,
Examiner.

On being cross-examined witness says:

The interview between M'r Alvin May and myself which led to the agreement of 13th December, 1873, was not had at the special request of M'r Asa May, but from the previous conversations between us
87 I knew that I should have such an interview, and that some compromise should be agreed upon by which we could secure something on our claims, and at the same time make some provision for M'r Alvin May and his family. The substance of the agreement of 13th December, 1873, was agreed upon by M'r Alvin May and myself, and was afterwards, the same day, reduced to writing and signed by us. I did not see M'r Asa May between the time of this interview and the time it was reduced to writing. I never showed the agreement to M'r Asa May myself, but it was showed to him by M'r Pasco on the morning of the 5th of January, 1874, before the sale. I do not know of my own knowledge whether M'r Asa May ever saw this agreement until 5th of January, A. D. 1874. I saw M'r Pasco at that time hand it to M'r Asa May and he read it and he made no remarks, pro or con. When I objected to the agreement of 5 of January, I stated that it did not protect me in the property I was to have under the agreement of 13th December, 1873, with Alvin May. The $21,000.00 consideration mentioned in the agreement of 13th December, 1873, was to be allowed on the indebted-
88 ness of Alvin May to me, stated in complainant's bill. I do not know whether or not the credit has been entered, but I consider the said indebtedness cancelled to that amount. The agreement mentioned in my direct examination, wherein I stated that M'r Asa May was to bid in the property at the sale, and afterwards to make me title to the property mentioned in the agreement of 13th December, 1873, was not in writing. It was a verbal agreement made in the office of M'r Pasco on the morning of the 5th of January, 1874, before the sale, no persons being present except Alvin May, complainant, M'r Pasco, and sa May. As before stated, M'r Asa May was a surety on my appeal bond for some $6,000.00, and about the middle of December, 1873, I directed M'r Pasco, my attorney, to give M'r Asa May control of the judgment and execution I held against M'r Alvin May, as a collateral to secure him against any loss he might sustain in consequence of his suretyship on said appeal bond. The 748 bushels of corn bid in at the sale by M'r Whitfield at $593.60 was taken by me at that price, but the 722½ bushels amounting to $365.66 on the Arendell place was never received by me. I do not know by what authority M'r Asa May delivered me the corn & fodder which I stated in my *in my* direct

89 testimony he turned over to me on the Asa May home place after the sale. I bid off a four-horse wagon at the sale but do not know whether the one afterwards turned over to me by M'r Asa May was the same wagon or not. I bid off one four-horse wagon and I got one four-horse wagon. The entire property sold was turned over to M'r Asa May to carry out the agreements of 13th December, 1873, & 5 January, 1874. I mean by these agreements to include the verbal agreement hereinbefore referred to, as well as the written agreements. The six mules referred to in my direct examination were turned over to me by M'r Asa May in person, who told me these were my mules, and that he believed I was getting more than an average lot. I told him I thought I was of that lot, but not more than an average of the mules of the country. I do not know what balance remains due me from M'r Asa May for the corn and fodder I turned over to him, as there is yet a settlement to be had between us. There was no agreement or understanding between me and M'r Asa May that I would at some future time purchase these lands from him. I was aware of the fact that M'r Asa May held a prior mortgage on the lands mentioned in the agreement of 13th December, 1873, and I expected to get
90 title to these lands under the sale to be made under a compromise by which M'r Asa May should get some lands and M'r Alvin May get some, and I get the lands mentioned in said agreement. In regard to the judgment and execution I held against Alvin May I instructed my attorney, M'r Pasco, to hold the same for the protection of M'r Asa against any loss on my appeal bond. I held a statutory lien for advances on the crops of 1873 of M'r Alvin May, but I did not receive anything on that lien, either the crops or the proceeds thereof sold at said sheriff's sale; but the corn and fodder sold at said sale was turned over to M'r Asa May to carry out the compromise agreement. This property was on the lands purchased by M'r Asa May, and he took possession by virtue of his purchase and under the compromise. I have heretofore stated that I did not know under what authority M'r Asa May delivered to me the corn & fodder on the Asa May home place after the sale, and wish to correct that statement by the one just made.

A. M. SLOAN.

Sworn to and subscribed before me this 16th day of September, 1875.

T. L. CLARKE,
Examiner.

Redirect examination, Andrew M. Sloan says:

91 The judgment upon which M'r Asa May signed my appeal-bond was paid in December, 1874. My understanding was and is that all my claims against Alvin May were to be satisfied by my getting the property mentioned in the agreement of December 13th, 1875.

A. M. SLOAN.

Sworn to & subscribed before me this 16th day of September, 1875.

T. L. CLARKE,
Examiner.

W'M H. FLOYD, witness for complainant, being duly sworn, testifies as follows:

Complainant began sowing oats on the Alvin May home place about 1st January, 1874; do not recollect the date exactly, but think it was before the sale on the 5th of January. A few days after the sale, I think

between the 7th and 10th of January, Col. Sloan took some hands with him and started from the "Scuffle place," and, as I understood at the time, was going up to M'r Asa May's after some mules. The boys returned that afternoon bringing six mules with them. A few days after this Col. Sloan told me he had sold two of these mules to M'r Asa May, and for me to deliver them to him when he sent for them. One of the hands from M'r Asa May's place came down for the two mules and I delivered them to him. A short time afterwards M'r Asa May came down
92 to the "Scuffle place" and told me he needed the other four mules and that he would make it all right with Col. Sloan, and let him have them. I was at this time the manager for Col. Sloan on the Scuffle place and am now. Two wagons, one four-horse wagon and and one two-horse wagon, were brought down to "Scuffle place" about the same time that the mules were.

W. H. FLOYD.

Sworn to & subscribed before me this 16th Sept., 1875.

T. L. CLARKE,
Examiner.

W. H. Floyd, cross-examined, says:

I know nothing of the sale of the two mules by Col. Sloan to M'r Asa May except from what Col. Sloan told me.

W. H. FLOYD.

Sworn to & subscribed before me this 16th Sept., 1875.

T. L. CLARKE,
Examiner.

CHARLES A. SLOAN, a witness for complainant, being duly sworn, testifies as follows:

About 1st January, 1874, the complainant, my father, put me in possession of the Alvin May home place, and I commenced sowing oats on the place. This was between the 1st & 3d of January, and I commenced sowing oats by or before the 3d. In December, 1873, before I
93 left Savannah, M'r Asa May told me that the place had cost my father enough to be good land; asked me if I thought I would like farming; told him I thought I would; asked me when I thought I would be down; told him just as soon as I could get the stock and implements from the Georgia place. I commenced working that place for my father, and I am still working it for him. These lands I am speaking of include the "Lang place." I left Savannah between the 20th & 26th December, 1873, to go to the Georgia place, in Thomas County, Georgia, to get the stock and implements for this place. I had this conversation with M'r Asa May two or three days before I left Savannah. My father has been in possession of these lands ever since that time. My father first proposed to me to come down and take charge of these lands in December, 1873.

C. A. SLOAN.

Sworn to & subscribed before me this 16th day Sept., 1875.

T. L. CLARKE,
Examiner.

C. A. SLOAN, cross-examined, says:

M'r Asa May had had some tenants on a portion of the lands this year and last year. I run two plows on this place last year, and am running three plows there this year. M'r Asa May run three plows on

the place last year, and I think has seven on the place this year.
94 I hold possesion of the place under authority of my father and not as tenant of M'r Asa May.

C. A. SLOAN.

Sworn to & subscribed before me this 16th Sept. 1875.

T. L. CLARKE,
Examiner.

It is agreed by counsel for complainant and defendant that W'M A. TABB testifies as follows:

That he, at the request of M'r Asa May, acted as one of the appraisers making the appraisement of the mules spoken of in the testimony, but that he knows nothing of any agreement between complainant & defendant.

Admitted before me to be correct by counsel for complainant & defendant.

T. L. CLARKE,
Examiner.

ANDREW M. SLOAN, recalled by counsel for complainant, testifies as follows:

The six mules mentioned by M'r W. H. Floyd in his testimony as having been sent down to the "Scuffle place" are the same which I recovered the value of in suit in U. S. court against M'r Asa May. The land I am suing for is known as the Alvin May home place, which includes the "Lang place." I have never authorized M'r Asa May to put tenants for himself on any portion of these lands.

A. M. SLOAN.

Sworn to & subscribed before me this 16th Sept., 1875.

T. L. CLARKE.
Examiner.

95 NOTE.—Complainant's counsel here suspended his direct testimony, reserving the right to examine Alvin May, a witness for complainant, said witness being absent on account of sickness. The defendant's counsel reserving the right to object to said witness on the ground of competency when he is offered. The counsel for complainant closed with the above reservation.

GRANT SCURRY, introduced as a witness for the defendant, testified as follows:

I am acquainted with the lands known as the Alvin May Home Place. This includes what is known as the Lang Place. Soon after the sheriff's sale in January, 1874, I applied to Asa May to rent the land known as the Galilee Place, which is a part of the Lang tract, He told me that he was on a trade with W'm Murphy for same place & could not give me an answer until he knew whether he and Murphy would trade. A day or two afterwards M'r Asa May informed me I could *not* get the lands, but I was disappointed in getting hands and could not take them. He then proposed to employ me and I agreed to it, but failing to get hands I could not take it. I did not know who was in possession of the place, but supposed M'r Asa May was. I went on the place &
96 examined the houses but saw no one there.

GRANT SCURRY.

Sworn to & subscribed before me this 16th Sept., 1875.

T. L. CLARKE,
Examiner.

H. C. BAILEY, witness for defendant, being duly sworn, testifies as follows:

I am acquainted with the Alvin May Home Place. In 1874 a portion of this place was in cultivation by Charles A. Sloan, and another portion by Asa May. In July, 1874, I had a conversation with Charles A. Sloan in which being asked by me who owned the lands referred to, he replied that they belonged to M'r Asa May and that he rented from him.

H. CLAY BAILEY.

Sworn to & subscribed before me this 16th Sept., 1875.

T. L. CLARKE,
Examiner.

ASA MAY, defendant, and witness for defendant, being duly sworn, testifies as follows:

At the time of the sheriff's sale there was due me on the mortgage debt $13,293.55 in gold. This amount includes the judgment before referred to and the three remaining notes not sued on with the interest thereon respectively. For the purpose of saving expense and delay, and having a final settlement that would be satisfactory to all
97 parties, I entered into the written agreement of the 5th of January, 1874. That agreement was drawn up by M'r Pasco. As well as I remember M'r Pasco took Col. Sloan and myself into the back room of his office and read to us the instrument, to which Col. Sloan and myself made no objection, after which M'r Alvin May was called in. The paper was read to him, to which he suggested an addition to protect, as he stated, some laborers that were and had been on his place, to whom he had sold mules that had been paid for, upon which an additional clause was inserted. This clause was added at the suggestion of M'r Alvin May and not at the suggestion of Col. Sloan. There was no reference at that time or anything said about any contract between Alvin May and Col. Sloan.

(Defendant's counsel here exhibited to witness the agreement of 13th December, 1873.)

I read this agreement for the first time this morning. Neither this agreement, or any copy of it was handed to me or read to me by M'r Pasco or any one else at the time of the agreement of 5th January, 1874, or at any time previous thereto. I have never considered myself bound to carry out the agreement of 13th December, 1873, nor have I ever acknowledged it to be binding on me. There was no verbal agreement on the 5th of January, 1874, or at any other time be-
98 tween Col. Sloan and myself different from the written agreement of that date; there was no verbal agreement of any kind between us. I never at any time authorized Col. Sloan to have an interview with M'r Alvin May and to make any compromise with him. I have been in possession of the Alvin May Home Place since the sale. Col. Sloan has also had a portion of the place in cultivation this year and last. I expected to obtain rent from him for the portion so cultivated, and notified Charles A. Sloan, his son, in charge of said lands cultivated by Col. Sloan to pay over rents to M'r Tabb, my agent. I have never acknowledged any title to this land to be in Col. Sloan. I have no recollection of ever having applied to Col. Sloan for permission for Ben and July Seymour to cultivate any portion of this land. I am sure I did not as I had two or three hundred acres of land at home, but this land was better and I preferred they should work it. There was no un-

derstanding or agreement between me and any other person that no one was to bid against me at the sale, but it was my intention to bid the amount of my mortgage debt and if any person bid more than
99 that they could take the lands. Nor was there any agreement between myself and Col. Sloan that I was to convey any part of the lands to him in case I became the purchaser. These lands had greatly depreciated in value between the time they were mortgaged to me and the time of the sale. There was no express contract between Col. Sloan and myself as to the rent of the land cultivated by him, it being customary in that neighborhood to pay ⅓ of crops for rent. I wrote to Col. Sloan some time in September, 1874, inquiring how much of the lands he could use for the next year, as well as I recollect. I stated that I wished to have more of the lands worked as the rents were scarcely sufficient to pay taxes. My reason for writing this to Col. Sloan was that I wished to give him the preference in renting. I was on the old "Asa May Home Place" shortly after the sale—I think the next day; M'r Alvin May and Col. Sloan were also present—and being bound by the agreement of 5th January, 1874, to pay M'r Alvin May $3,000.00, which was to be satisfied in mules and as was otherwise provided in the agreement, I was not particular about how many mules took. I would not have known how much to charge M'r Alvin May for the mules and had them appraised in order to ascertain their
100 value. I did not deliver any mules to any one. I did not object to their being taken for the reasons stated. They were not delivered on account of any agreement or understanding between Col. Sloan and myself; in fact, there was no agreement whatever between Col. Sloan and myself, that any of the property, real or personal, purchased by me at the sale, should be conveyed by me to Col. Sloan, or that I should hold it for his use, but I bought and held it for my own use. Nor did I deliver any corn or fodder to Col. Sloan. The cribs were *guaged* by the sheriff and M'r Whitfield, and I took the corn at 60 c'ts per bushed. I purchased the corn in the big crib from Col. Sloan at that price. The corn in the little crib was hauled away by Charles A. Sloan and M'r Alvin May, but I know not what part of it each one got. I would not say positively that nothing had passed between Col. Sloan and myself as to the agreement of Dec. 13th, 1873, between Col. Sloan & Alvin May prior to the sale or since that time, but I am positive I have never consented to that agreement in any way whatever.

ASA MAY.

Sworn to & subscribed before me this 16th Sept., 1875.

T. L. CLARKE,
Examiner.

101 Cross examined, testifies as follows:

The $13,293.55 of indebtedness spoken of by me in the direct examination included both the past due and the then to become due indebtedness secured by the mortgage from Alvin May to me, principal and interest, as well as the judgment in my favor against Alvin May; it included the whole of the mortgage and judgment indebtedness of Alvin May to me. I know of no reason why Col. Sloan signed the agreement of 5th January, 1874, as I never asked him.

Question by complainant's counsel. Was there, in your opinion, under the circumstances, any necessity for Col. Sloan's signing that agreement?

(Objected to by defendant's solicitor on the ground that the witness is interrogated not as to facts but as to his opinion.)

Answer. So far as my interest extended I did not see any necessity for his signing it. My interest was secured by my mortgage on the whole property, and the sale would have gone on any way without any agreement. When I signed the agreement of the 5th Jan'y, 1874, I did not, with my understanding of language as to what it takes to know anything, know of the existence of the agreement of December 13th, 1873, between Col. Sloan & Alvin May. I cannot say positively
102 whether I had or had not heard Col. Sloan speak of the agreement of 13th December, 1873, prior to the signing of the agreement of January 5th, 1874, but I am positive that I never assented to that agreement. The portion of land cultivated by Col. Sloan in 1874 is that portion of the "Lang place" known as the Galilee place. Col. Sloan has never paid me any rent for said land, but he still owes it. Col. Sloan replied to the letter referred to in my direct examination as written by me to him, inquiring how much of the land he could work the following year, that he hoped to be able to work 300 or 350 acres, and that he did not wish me to pay the taxes on the lands; he would pay them himself. I have not been able to find the letter written me by Col. Sloan as above stated.

ASA MAY.

Sworn to & subscribed before me this 16th Sept., 1875.

T. L. CLARKE,
Examiner.

M'r ASA MAY, recalled by defendant's counsel, says:

Col. Sloan worked two mules last year, and is working three this year, on that part of the Lang place cultivated by him. He worked 65 or 70 acres last year, and is working about one hundred this year. I am also cultivating lands on same tract. Last year I worked 3 mules & about 100 acres; this year I am working 11 mules and about 370 acres.
103 ASA MAY.

Sworn to & subscribed before me this 16th Sept., 1875.

T. L. CLARK,
Examiner.

M'r SAMUEL PASCO, witness for defendant, being duly sworn, testifies as follows:

The notes belonging to M'r Asa May and Col. Sloan against M'r Alvin May were put into my hands for collection, with the full understanding at that time that there was no conflict between those two parties, and that it is only because the parties now differ with regard to matters with which I was then connected that I have consented to testify.

(The agreement of January 5th, 1874, shown to witness.)

This agreement was drawn up by me. The parties to this agreement met in my office & it was executed there. My recollection is that it was first submitted to M'r Asa May & Col. Sloan in the back room of my office. The last paragraph had not then been written. The agreement as it then stood was acceptable to Col. Sloan and M'r Asa May. After our private conference M'r Alvin May was called in from the front room and the document read to him. He declined signing it in the shape it was then in, stating that he had long regarded the property as his
104 own, and had traded off a good deal of the personal property in good faith, and could not consent that the parties with whom he

had thus traded should suffer; that he was willing that where parties had not paid for property, or had paid for it only in part, to take the property back and bring it up for sale, and if the rights of these purchasers were respected he was willing to sign the agreement. M'r Asa May said in substance, "Alvin, I have too much respect for you to ask you to act otherwise"—that he did not wish these parties to suffer. I was then asked to add that stipulation to the agreement, and, all parties consenting to it, I wrote out the last paragraph to the agreement as it now stands. There was no intention, so far as I was informed, of making it contradict the second paragraph of said agreement. It was then taken into my front room and executed in the presence of myself and M'r A. Denham. The last paragraph of this agreement was added at the sole suggestion of M'r Alvin May. There was no reference at that time made to the agreement made on 13th December, 1873, between Alvin May and Col. Sloan. As I understood it, this last agreement was intended to supercede the agreement of 13th December, 1873. To best of my recollection the agreement of 13th December, 1873, was not exhibited in the room that day. I do not think I ever showed that agreement to M'r Asa May. I feel confident I did not do so that day.

105 There was no agreement between Col. Sloan & M'r Asa May on that occasion to the effect that M'r Asa May was to bid off the property, and afterwards convey such portion of it as was described in the agreement 13th Dec., 1873, to Col. Sloan. There was no other agreement than that reduced to writing and before referred to. I am still the attorney of record on the executions in favor of Col. Sloan and M'r Asa May against Alvin May. There was nothing paid, so far as I know, upon either of these executions prior to the sale, and no entry of satisfaction has been made by me as attorney of Col. Sloan on his execution, nor have I ever been instructed to make any such entry.

S. PASCO.

Sworn to & subscribed before me this 16th Sept., 1875.

T. L. CLARKE,
Examiner.

Defendant's counsel then offered in evidence minute-book C, of Jefferson circuit court, showing a judgment by default, entered Sept. 25th, 1872, in favor of Sanders, Goodwin & Miller against Alvin May, for $484.25 damages and $20.30 costs; also a similar judgment in same court in favor of W. H. Stark & Co. against Alvin May, of same date, for $825.38 damages and $20.30 costs, the suits in the above having been commenced under the late code of procedure; also minute-book B, of same court, showing a judgment entered at fall term, 1869, of said court in favor of Samuel Pasco, master in chancery, and against

106 Alvin May, Asa May, and Grant Scurry, for the sum of $1,049.50 damages and 11.63 costs; and also minute-book of Jefferson County court, showing a judgment by default, entered October 15th, 1872, in favor of J. D. Morris against Alvin May for $142.13 damages and $12.80 costs in a suit commenced under the code of procedure, which was received.

T. L. CLARKE,
Examiner.

R. B. WHITFIELD, a witness for defendant, being duly sworn, testifies as follows, to wit:

I was absent from Monticello on the day of the sale, the 5th of Janu-

ary, 1874, but authorized M'r A. Denham to represent me at the sale, & gave him instructions to see that the crops of the year 1873, that were to be sold on that day, were not sacrificed, and to bid on them for me, but not above a limited amount. I don't remember what the limit was, but think it was $1.00 per bushel for corn. When I returned to Monticello, I found that M'r Denham had bought two lots of corn at different prices. I don't remember the prices, but they are correctly shown by the sheriff's return of the sale of that day.

(A copy of the sheriff's return, marked "Exhibit C," to def't's answer shown to witness.)

This return is correct. One lot was grown on old Asa May home place and the other on the Arendell place. On the day of the purchase, subsequently, pursuant to an understanding between Col.
107 Sloan, who held a statutory lien on the crop, and myself, as attorney of Sanders, Goodwin & Miller, & other execution creditors of Alvin May, Col. Sloan got the corn purchased by me under the following circumstances: Col. Sloan's lien being prior to my executions, it was agreed that I should hold the corn until Col. Sloan furnished me an account of advances made on crop of 1873, and if the amounts due him for such advances at date of the sale should exceed in value the property purchased by me at the sale, upon which he had a lien, Col. Sloan was to take it at my bid; but if the amount due Col. Sloan on such advances should be less than the value of the property purchased by me upon which he had such lien, then the difference between his account and the value of the property by me bid off was to be applied to my executions. Col. Sloan rendered the account, which was greater in amount than amount of my purchase at the sale, and I told M'r Pasco, the attorney of Col. Sloan, that I would no longer claim the articles purchased by me at the sale. The lien of Col. Sloan was a statutory lien for advances. I made no formal delivery of the property to Col. Sloan, except informing M'r Pasco, his attorney, as stated. Since that time I have understood I have been relieved from all responsibil-
108 ity on account of the said purchase. The corn was not used by me, nor have I received any pay for it, nor has the amount, or any part of it, been credited on either or any of the judgments I control.

(Bill, agreement of sale, and decree of foreclosure of mortgage on Arendell place handed to witness, copies of which are hereto attached, marked "Exhibits ," which are substituted for the originals by consent of counsel.)

I do not know exactly how long M'r Alvin May has been in possession of the Arendell place, but think he went into possession at the time provided for in the agreement with Arendell, to wit, Jan'y 1, 1872.

R. B. WHITFIELD.

Sworn to and subscribed before me this 17 Sept., 1875.

T. L. CLARKE,
Examiner.

Defendant's counsel here closed the taking of his testimony, and plaintiff's counsel offered as a witness in rebuttal Charles A. Sloan, and counsel for defendant objects to the introduction of said witness, the complainant having closed, as heretofore stated in the record.

CHARLES A. SLOAN, a witness offered in rebuttal by the complainant, being duly sworn, testifies as follows, to wit:

109 I have never stated to M'r H. C. Bailey that the lands culti-

vated by me on the Alvin May home place belonged to M'r Asa May or that I rented the same from him. In September, 1874, M'r Asa May wrote me a note directing me to pay over the rent of these lands to his agent, M'r W. A. Tabb. This was the first I knew of his claiming the lands or rent for the same.

Question by complainant's counsel: What time in Dec., 1873, was M'r Alvin May in Savannah, and where did he stay?

(Defendant's counsel objects on the ground that the facts sought to be proven are not in rebuttal, and the question should have been asked in his direct examination.)

Answer. M'r Asa May was in Savannah between the 20th & 24th of December, 1873, and staid at my father's (the complain't's) house.

C. A. SLOAN.

Sworn to & subscribed before me this 17th Sept., 1875.

T. L. CLARKE,
Examiner.

ANDREW M. SLOAN, complainant, offered as a witness in rebuttal for complainant, after the same objection being made by defendant's counsel as was made by him to the witness last examined, after being duly sworn, testifies as follows, to wit:

In reply to the letter referred to by M'r Asa May in his testimony as having been written by him to me in September, 1874, I stated that I expected to cultivate 300 or 350 acres of land, and that I did not wish him to pay the taxes; that I expected to pay the taxes on my
110 own land. I fixed the amount to be cultivated at 300 or 350 acres because I thought it as much of the cleared land as ought to be cultivated; the balance needed rest.

Question by complainant's counsel: State whether or not M'r Asa May delivered any mules purchased by him on 5 January, 1874, on the "Asa May old home place" shortly after the sale, and to whom he delivered them, and what mules?

(Defendant's counsel objects on the ground that the facts sought to be proven by the witness are evidence in rebuttal, and should have been elicited on his direct examination.)

Answer. He delivered six mules to Alvin May, six mules to me, and the balance—six or seven—he kept himself.

Question by complainant's counsel: Did M'r Asa May ever claim these six mules delivered to you as his property afterwards?

(Def't's counsel made the same objection as to last question.)

Answer. He did. When I had the interview with M'r Asa May in latter part of Sept., 1874, when I learned he claimed the land, I asked him to pay me for these mules which I had sold him, and had been delivered to him by M'r Floyd, and he refused to pay for them, claiming them as his mules.

Question by complainant's counsel: State whether or not you ever spoke to or conversed with M'r Asa May as to the agreement of
111 13th December, 1873, prior to the signing of the agreement of 5th January, 1874; and, if so, when and where, and whether or not he assented to it.

(Same objection made to this question by def't's counsel as to two last.)

Answer. I certainly did. While M'r Asa May was staying at my house in Savannah, between the 20th & 24th of Dec., 1873, we talked over our matters with Alvin May, including the above agreement, and

he expressed himself as very much pleased and made no objection to the agreement. I also talked with him, as stated in my former testimony-in-chief. When M'r Asa May and myself gave our claims to M'r Pasco for collection we went into his office together and handed him our respective claims, and nothing was said of any conflict between us or the absence of any conflict.

Question by complainant's counsel: Did M'r Asa May ever say anything to you prior to Sept., 1874, about paying rent for the land cultivated by you; and, if so, when, and what did he say?

Def't's counsel objects on same grounds as previously stated.)

Answer. He never mentioned it to me prior to that time. M'r Alvin May was in possession of the Arendell place when he executed the mortgage to A. M. Sloan & Co., and is still in possession, and I understood at that time from him that he had a title to the place, and
112 that there was only a small balance due on the mortgage.

Question by complainant's counsel: Did you ever authorize M'r Asa May to put any tenants on the land in question or work the lands or any part thereof further than you stated as to Ben and July Seymour in your first examination?

(Same objection made by def't's counsel as before.)

Answer. I never did, and I have always claimed that the parties put on the lands by M'r Asa May were liable to me for rent, and I have so stated to M'r Asa May, but I have received no rent from them, and I have notified the parties—some of them in writingand some orally—that I would claim rent from them. Two of the tenants now on the place claimed by M'r Asa May as his tenants were put there by me last January, and I have furnished them supplies to make the crop.

A. M. SLOAN.

Sworn to & subscribed before me this 17th Sept., 1875.

T. L. CLARKE,
Examiner.

By agreement of counsel for complainant and defendant the further taking of testimony in this cause is now adjourned to such time as may be fixed by the examiner for taking the testimony of the witness Alvin May.

T. L. CLARKE,
Examiner.

MONTICELLO, FL'A, *Sept. 17th*, 1875.

WAUKENAH, FL'A, *October 25th*, 1875.

By agreement of counsel for complainant and defendant the
113 taking of the testimony of Alvin May in this cause was resumed this day at Waukeena, in Jefferson County, Florida, being the time and place appointed and fixed by the examiner for taking the testimony of Alvin May, a witness for complainant.

ALVIN MAY, a witness for complainant, being duly sworn, testifies as follows, to wit:

(Witness was shown agreement of 13th December, 1873, and 5th January, 1874, and same read to him.)

I signed these two agreements as a party thereto. I was at the Asa May home place the day of the appraisement of the mules mentioned before in testimony of other witnesses. Col. Sloan and M'r Asa May

were there. All the mules were appraised, and the object was to get an average lot. I got (8) eight mules. M'r Asa May came to me and wanted me to bring back the mules I got; this was before the mules were driven off from the place. I refused to give back the mules.

Question by complainant's counsel. When M'r Asa May asked you to bring the mules back, did he say why he wanted them brought back?

Answer. He did not say why he wanted them. I don't remember that any other words passed between us after that *that* day.

Question by complainant's counsel. If you understood why he wanted them brought back, upon what was that understanding based?

Answer. I did not know why he wanted them back, but sup-
114 posed there was some dissatisfaction about the appraisement.

(Def't's counsel objected to the latter clause of the answer on the ground that suppositions of witness are not testimony.)

Four of the mules I got I considered were given to me in compliance with the agreement of 5th of January, 1874, and that the appraisement was made in order that I might get an average lot. There were no objections to my getting them under the agreement or to carrying out the agreement. Soon after this I saw some of the mules that were in the lot that day in the possession of Col. Sloan plowing in his field, and a short time afterwards I saw the same mules in the possession of M'r Asa May. I left the lot that day immediately after I got the mules that were allot'ed to me, and I saw no mules allot'ed to Col. Sloan that day. I do not mean to say that no mules were that day allotted to Col. Sloan, but only that I saw no such allotment made. I got the annexed memorandum some time after this in the handwriting of M'r Frank Russell, one of the appraisers (marked Exhibit E, the same being by consent of counsel cut out of memorandum-book). The "Picolata place" is about the best land included in the mortgage executed by me to Asa May.

It is about as good as any land in this county. There is some
115 waste land on the place. As well as I recollect I paid M'r Asa May between nine thousand and eleven thousand dollars on the mortgage indebtedness I owed him.

ALVIN MAY.

Sworn to & subscribed before me this Oct. 25, 1875.

T. L. CLARKE,
Examiner.

Cross-examined, says:

I sold to Col. Sloan the property mentioned in the agreement of 13 December, 1873. I know nothing of any business transaction between Col. Sloan and M'r Asa May in regard to the matters in controversy. The last paragraph of the agreement of 5th January, 1874, was put in at my instance, and I refused to sign it until this was added. I had been trading mules included in the mortgages, and I wanted this clause added in order to protect the parties who had obtained these mules from me and paid for them.

ALVIN MAY.

Sworn to & subscribed before me this 25th day of Oct., A. D. 1875.

T. L. CLARKE,
Examiner.

Defendant's counsel here offered the defendant, Asa May, as witness for defendant to rebut the testimony of complainant, A. M. Sloan, as taken on 17th Sept., 1875.

Complainant's counsel objected to the introduction of said witness on the following grounds:

1st. Because after the testimony of A. M. Sloan, now proposed
116 to be rebutted, the further taking of testimony in this cause, except that of Alvin May, was closed by defendant as well as complainant.

2. Because the taking of such testimony at this place, Waukeenah, is a surprise and without notice.

3. Because the defendant has heretofore closed his testimony and so announced.

ASA MAY, defendant, and witness for defendant, being sworn, says:

I had no such conversation with Col. Sloan as the one mentioned by him in his testimony and said to have taken place at the house of said Sloan in Savannah, G'a, between the 20th & 24th of December, 1873, as appears on page 35 of this testimony. The suspension of the house of A. M. Sloan & Co. took place on the 18th of December, A. D. 1873, and I went there a short time afterwards to get money, the proceeds of my cotton, from them.

ASA MAY.

Sworn to & subscribed before me this 25th Oct., A. D. 1875.

T. L. CLARKE,
Examiner.

By agreement of counsel for complainant and defendant the further taking of testimony in this cause is now adjourned to Saturday, the 6th day of November, A. D. 1875, at 10 o'clock a. m., at the office of the undersigned in Monticello, Fl'a.

Waukeenah, Fl'a, Oct. 25th, 1875.

T. L. CLARKE,
Examiner.

117 By agreement of counsel the further taking of testimony in this cause is adjourned to Monday, the 8th day of November, 1875, at 10 o'clock a. m.

Monticello, Fl'a, Nov. 6th, 1875.

T. L. CLARKE,
Examiner.

By agreement of counsel for complainant & defendant, the further taking of testimony in this cause is now adjourned to Monday, the 15th day of November, A. D. 1875, at ten o'clock a. m., at the office of the undersigned, in Monticello, Fla.

Monticello, Fla., Nov. 8th, 1875.

T. L. CLARKE,
Examiner.

By consent of counsel for complainant and defendant in this cause, no further evidence in this cause being adduced by either party, the taking of testimony herein is now closed.

Monticello, Fla., Nov. 15th, 1875.

T. L. CLARKE,
Examiner.

And the following is Exhibit A mentioned above

EXHIBIT A.

Second judicial circuit of Florida. In Jefferson circuit court. In chancery.

ANDREW M. SLOAN
vs.
ASA MAY.

You will please take notice that I have selected Wednesday, the 8th day of September, A. D. 1875, for taking the testimony of the witnesses proposed for examination by the complainant and defend-
118 ant. You will therefore attend and interrogate said witnesses on said day at 10 o'clock a. m. at my office in Monticello, Florida.

Sept. 1st, A. D. 1875.

T. L. CLARKE,
Examiner.

To GEO. P. RANEY, Esq., *Compl't's Sol.*, & Mess. STEPHENS & LOVE, *Def't's Sol's.*

Due and legal service of the above notice acknowledged & all other & further service waived, Sept. 2d, 1875.

GEORGE P. RANEY,
Compl't's Solicitor.
S. B. STEPHENS.

And the following is Exhibit B, mentioned above:

EXHIBIT B.

Circuit court of the United States, 5th circuit, northern district of Fla.
To January rule day, A. D. 1875, at Tallahassee.

Andrew M. Sloan, the plaintiff in this suit, who is a citizen of the State of Georgia, by his attorneys, Papy & Raney, complains of Asa May, the defendant, who is a citizen of the State of Florida and has been summoned to answer the plaintiff in an action of assumpsit, damages two thousand dollars.

For that whereas, to wit, on the 10th day of February, A. D. 1874, before the commencement of this suit, the defendant was indebted
119 to the plaintiff in the sum of nine hundred and eighty-five dollars for the price and value of six mules then and there sold and delivered by the plaintiff to the defendant at defendant's request; and in the sum of nine hundred and eighty-five dollars for the price and value of mules before the said 10th day of February, A. D. 1874, sold and delivered by the plaintiff to the defendant at defendant's request; and in the sum of nine hundred and eighty-five dollars for money found to be due from the defendant to the plaintiff upon an account then and there stated between them.

And whereas the defendant afterwards, to wit, on the day and year aforesaid, and in consideration of the premises, then and there promised to pay the said several sums of money respectively to the plaintiff on

request, yet he hath disregarded his promises and hath not paid said sums of money or any part thereof, though often thereunto requested by the plaintiff, to the plaintiff's damages two thousand dollars, and thereupon plaintiff brings his suit.

PAPY & RANEY,
Plf's Att'ys.

The following is the indorsement on the declaration : Filed this the 4th day of January, A. D. 1875. Cha's H. Foster, clerk, by L. B. Foster, d. c.

120 ACCOUNT SUED ON.

Asa May to Andrew M. Sloan, Dr.

1874.		
Feb'y 10th.	For 1 clay-bank mule	$175 00
	1 black "	175 00
	1 greyish "	175 00
	1 bay "	160 00
	1 dark brown or black mule	160 00
	1 light-bay mule	140 00
		985 00

TALLAHASSEE, FLORIDA, *February 4th, A. D.* 1875.

Court met pursuant to adjournment.
Present, Honorable Philip Fraser, judge.

ANDREW M. SLOAN, PLAINTIFF,
vs.
ASA MAY, DEFENDANT.
} Assumpsit damages, $2,000.

This day came the parties, by their attorneys, and thereupon came a jury of good and lawful men, to wit, L. C. Demilly, T. B. Wells, A. Hopkins, R. H. Gamble, E. C. Weeks, Isaac Dent, Samuel Quaile, Andrew DeCoursey, John Daniels, Sidney A. Trent, George Damon, and George Lewis, who, being duly tried and sworn to try the issues joined between the plaintiff and defendant and a true verdict to give, and they having heard the evidence and argument of counsel retired under the
121 instructions of the court to consider of their verdict.

TALLAHASSEE, FLORIDA, *February 5th*, 1875.

Court met pursuant to adjournment.
Present, Honorable Philip Fraser, judge.

ANDREW M. SLOAN, PLAINTIFF,
vs.
ASA MAY, DEFENDANT.
} Assumpsit. Damages, $2,000.

This day the jury in this cause came into court and rendered the following verdict, to wit: "We, the jury, find for the plaintiff, and assess the damages at nine hundred and eighty-five $\frac{23}{100}$ dollars.—A. HOPKINS, *Foreman.*"

Whereupon it is considered by the court that the said Andrew M.

Sloan do recover of the said Asa May the said sum of nine hundred and eighty-five & $\frac{23}{100}$ dollars, as well as the sum of , his costs by him in this behalf expended, and that the said defendant be in mercy, &c.

I, Charles H. Foster, clerk of the United States circuit court for the northern district of Florida, do hereby certify that the foregoing is a true copy of the original entries on the minutes of said court and of the declaration & account sued on in said action.

In testimony whereof I have hereunto set my hand and affixed
122 the seal of said court this the third day of August, in the year of our Lord one thousand eight hundred and seventy-five.

[SEAL.] CHA'S H. FOSTER, *Clerk.*

EXHIBIT.

STATE OF FLORIDA,
County of Jefferson:

Memorandum of agreement made and entered into on this 23rd day of December, A. D. 1871, by and between Alvin May, of the first part, and W'm H. Arendell, of the second part, both of said county of Jefferson.

The said May is to buy and purchase of said Arendell his plantation in said county of Jefferson, comprising one thousand and twenty acres of land, more or less, four mules out of six now on the place, for the price and sum of eight thousand dollars. The said Arendell is to make a warranty title to said lands, and clear the same of all incumbrances, particularly of the mortgage now existing in favor of different parties and recorded in deed-book K, pages 299–302, in Jefferson County, and all the claims which said May now holds against said Arendell, including his proper contributive share of the McNought, Beard & Co. security debt, are to be included in the purchase-money, and are to be deducted from the aforesaid sum of eight thousand dollars. The balance thereof is to be paid on or before the first day of January,
123 A. D. 1873, at which time the titles are to be executed, but said May is to go into possession of the said premises on the first day of January, A. D. 1872, and the transaction is to bear date as of that day. The said May is to have the use of two hundred bushels of corn now on the place and is to return the same at the end of the year out of the corn-crop when gathered.

In testimony whereof we have hereunto set our hands and seals the 23d day of December, A. D. 1871.

(Signed) W. H. ARENDELL. [SEAL.]
ALVIN MAY. [SEAL.]

Signed, sealed & executed in our presence—
(Signed) W. R. BLAKE.
T. WALLER PALMER.
ASA MAY.
A. H. McCANN.

STATE OF FLORIDA,
Jefferson County:

I hereby certify that the above and foregoing is a true copy of the

original agreement entered into between W'm H. Arendell & Alvin May for sale of the Arendell place.

Witness my hand and seal this 18th Sept., 1875.

T. L. CLARKE, [SEAL.]
Examiner.

EXHIBIT.

To the judge of the circuit court of the second judicial circuit of the State of Florida, in and for Jefferson County, in chancery sitting:

Council B. Wooten and Elizabeth Reagan, of the State of
124 Georgia, Abner Wethington and John Q. Wethington, late partners of the firm of A. & J. Q. Wethington, William Bellinger, Grant Scurry, Octavius H. Gadsden, and Sallie Grantham, of the county of Jefferson and State of Florida, and Norris and Moore, of the State of New York, late partners of the firm of Norris & Moore, A. Bie Harrison, of the State of Florida, and Holleyman, late partners of the firm of Holleyman & Harrison, bring this their bill against William H. Arendell and Winaford Arendell, his wife, Alvin May, and William W. Gelfer, as surviving partner of the late firm of H. F. Slauter & Co., of the State of Florida.

And thereupon your orators complaining, say that on the 27th day of February, A. D. 1868, the defendant, William H. Arendell and Winaford Arendell, his wife, made and executed a certain mortgage which was duly recorded in the office of the clerk of this court February 29th, A. D. 1868, in deed-book K, fol. 299–302, whereby they as parties of the first part thereto mortgaged and pledged to the legal and lawful holders of the claims therein mentioned and specified certain real and personal property therein particularly described, in the county of Jefferson and State of Florida, to secure the payment thereof by the first day of January, A. D. 1875, all of which will fully appear by refer-
125 ence to the said mortgage hereto attached, marked "Exhibit A," and made a part of this bill, all of which said property is liable for and subject to the payment of the debts and claims held and owned by your orators, and the amounts due and unpaid on the accounts of said William H. Arendell as guardian of the children of R. B. Cole, deceased.

And your orators allege that the allegations in said mortgage, that your orator Scurry and the defendant May are the sureties of the defendant William H. Arendell, on his bond as guardian of R. M. Cole, and the other surviving children of R. B. Cole, is erroneous in this, that the defendant May is not a surety as alleged therein, but your orator Gadsden is surety upon said bond with said Scurry, and your orators believe that the allegation that the defendant May is such surety was made therein by mistake, and that the intention of the defendants William H. Arendell and Winaford Arendell, his wife, was to secure the sureties on said bond, whoever they were, from loss on account of said guardianship by reason of their suretyship, by securing the ultimate payment of whatever amount might be found to be due the said children
126 by the defendant William H. Arendell on a final settlement of his accounts as such guardian as aforesaid. That your orator, Council B. Wooten, is the legal and lawful holder of the right to the amount due and unpaid on the promissory note mentioned in said mortgage as given to Council Wooten, which amounts to about two hundred and twenty-five dollars ($225). That your oratrix, Elizabeth Reagan, is the legal and lawful holder of the right to the amount due and unpaid

upon the judgment obtained in the circuit court of Jefferson County, Florida, A. D. 18 , upon the note therein mentioned as given to Joseph Kersey, amounting now to about eight hundred dollars ($800); that your orators Holleyman & Harrison are the legal and lawful holders of the balance due and unpaid on the note therein mentioned as given to them, which now amounts to about two hundred and fifty-five dollars ($255); that your orators Norris & Moore, lately partners of the firm of Norris & Moore, are the legal and lawful holders of the right to the amount due and unpaid on the note therein mentioned as given to them, which amounts now to about five hundred and sixty dollars ($560); that

127 your orators Abner Wethington and John Q. Wethington, late partners of A. & J. Q. Wethington, are the legal and lawful holders of the right to the balance due and unpaid on the promissory note therein mentioned as given to them, and of the right to the amount due and unpaid on the amount therein mentioned, as an unliquidated balance due them, which has since the execution of said mortgage been closed up and included in a promissory note, both of which amount now to about three hundred dollars ($300); that your orator William Bellinger is the legal and lawful holder of the right to the balance due and unpaid on the unliquidated balance therein mentioned as due him, and of the right to the balance due and unpaid of the unliquidated balance therein mentioned as due the firm of Bellinger & Cookny, which two amounts have since the execution of said mortgage been closed up and included in one promissory note, and the amount due and unpaid thereon is about dollars ($); that your oratrix Sallie Grantham is the legal and lawful holder of the right to the amount due and unpaid on the amount therein mentioned of one hundred and fifty dollars as given to her, which amounts now to about two hundred and sixty dollars ($260). That the amount due and unpaid by the defendant Will-

128 iam H. Arendell, on his account as guardian of R. M. Cole, one of the children of the late R. M. Cole, dec'd, is about six hundred and ninety dollars ($690), and the amount due and unpaid by the defendant William H. Arendell, on his account as guardian W. L. Cole, one of the children of R. B. Cole, dec'd, is about two hundred and seventy dollars ($270); and the amount due and unpaid by the defendant William H. Arendell on his account as guardian of A. J. Cole, now A. J. Cunningham, is about one hundred and seventy dollars ($170).

And your orators allege that whether all the parties defendant of the second part to the said mortgage accepted the terms of the same, and in consideration thereof extended the time of payment of their claims to January, A. D. 1875, or not, which time has expired, your orators' claims and the amounts due and unpaid by the defendant William H. Arendell, as guardian of the children of R. M. Cole, dec'd, as aforesaid, are prior in dignity to them, and ought to be the first paid out of the proceeds of said mortgaged property.

And your orators are informed and believe, and thereupon allege, that the note mentioned in said mortgage as given to T. J. Perkins & Co., and unliquidated account therein mentioned as due to the said

129 firm of of N. F. Slanter & Co., of which W'm W. Gelzer is the surviving partner, and the amount mentioned therein as due Joshua Floyd, and all other claims mentioned not held and owned by your orators, except the amounts due and unpaid by the defendant William H. Arendell as guardian of the children of R. M. Cole, have been paid and satisfied.

Your orator further alleges that on or about December the 23d, A. D. 1871, the said William H. Arendell agreed to sell to the said Alvin May

one of the parties of the second part to the aforesaid mortgage, who accepted the security of the same, and in consideration thereof extended the time of the payment of whatsoever amounts were due him by the said Arendell, all the real property mentioned in said mortgage, except the store-house and lot adjacent at Waukeena, and all the mules then remaining that were included therein, for the price and sum of eight thousand dollars ($8,000), which amount the said May was to pay on the first day of January, A. D. 1873, after deducting therefrom all the amounts due by the said Arendell to the said May, including two judgments in Jefferson circuit court, one in favor of said May against said Arendell for twelve hundred and sixty-two $\frac{57}{100}$ dollars ($1,262.57), dated
130 December 1st, A. D. 1870, and his distributive share or portion of one in favor of McNought, Beard & Co., for twenty-nine hundred and forty-one $\frac{67}{100}$ dollars ($2,941.60), dated May 25th, A. D. 1869, and against the said May and the said Arendell, and one Charles De Coursey and one Marion De Coursey, and one Jeremiah W. Anderson.

And your orators further allege that the said May took possession of said property under the said agreement, and is now, and has been ever since January 1st, A. D. 1872, in possession thereof, and has utterly failed to pay the said sum of eight thousand dollars as agreed by him, with the said Arendell, or any part thereof, except the amounts due him by the said Arendell.

And your orators allege that the amounts mentioned in said mortgage as due to the said Alvin May and the defendant, Arendell's liability for contribution to the said Alvin May on the judgment of McNought, Beard & Co. aforementioned, and also his liability on the said judgment in favor of the said Alvin May have all been fully paid, satisfied, and discharged by the said agreement, and the actings & doings of the said Arendell and May thereunder, and that no part of the said property mentioned in the said mortgage is any longer subject to or liable for the pay-
131 ment of the same, or any of the claims mentioned in said mortgage that have been paid or satisfied.

To the end, therefore, that the said defendants may, if they can, show why your orators should not have the relief hereby prayed, and may upon their several and respective corporal oaths and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to each and every material allegation herein contained as if they were particularly interrogated thereto.

Wherefore your orators pray that an account may be taken under the direction of this court of what is due to each of your orators and on the accounts of the defendant William H. Arendell, as guardian as aforesaid, for principal and interest on the several claims secured by said mortgage, and also to ascertain what other amounts are due upon said mortgage than said accounts and those due your orators, if any, and to whom, and the said defendant William H. Arendell and Winaford Arendell, his wife, may be required to pay unto your orators the money which shall be found to be due to each of them, and to
132 the persons legally and lawfully entitled to receive the amounts due upon the said accounts as guardian as aforesaid, by a short day to be named by this court, and in default thereof that they, the said William H. Arendell and Winaford Arendell, his wife, and all the other defendants to this bill and all and each of their respective heirs, executors, administrators, survivors, and assigns, and all other persons claiming or to claim by, through, or under them, or either of them, may be absolutely and forever barred and foreclosed of and from all equity and right

of redemption of, in, and to the said mortgaged premises and every part thereof, and that the claims of the said defendants Alvin May, T. J. Perkins, and William W. Gelzer, as surviving partner of the late firm of H. T. Slanter & Co., and all other claims mentioned in said mortgage, except the amounts due on said accounts as guardian, may be declared satisfied and discharged, and the said mortgaged premises may be sold according to law and free from the lien of all claims except those owned and held by your orators and the amounts due on said accounts as guardian, and the proceeds of said sale be applied to the payment of the amounts found to be due your orators, and the amounts due on
133 the accounts of said Arendell as guardian, pro rata, if the same shall not be sufficient to satisfy them in full, and to the costs of these proceedings, and that they may have such other and further relief as in equity and in good conscience their case may require.

And that the State's writ of subpœna may issue to William H. Arendell and Winaford Arendell, his wife, Alvin May and William W. Gelser, as surviving partner of the late firm of H. T. Slanter & Co., requiring them to appear and answer this bill, and to abide and perform the orders of this court herein, under a penalty to be named therein according to law; and your orators will ever pray, &c.

R. B. WHITFIELD,
Counsel for Plaintiffs.

457.17.] WAUKEENAH, *Feb. 20th*, 1863.

Nine months after date we or either of us promise to pay to Norris & Moore or order, with the current rate of exchange on New York, four hundred and fifty-seven & $\frac{17}{100}$ dollars, with interest from date; value received.

W'M H. ARENDELL.
W'M G. BARTH.

(Across the face:) Jan. 19th, 1871, $251.84 p'd. Norris & Moore. Copy.

134 $146.72.]

One day after date I promise to pay Holleyman & Harrison, or bearer, the sum of one hundred and forty-six & $\frac{72}{100}$ dollars, value received. March 25th, 1867.

W'M H. ARENDELL.

(Across the face:) Copy.

$150.00.] WAUKEENAH, *July 17th*, 1866.

One day after date I promise to pay Holleyman & Harrison, or bearer, the sum of one hundred & fifty dollars, with eight per cent. interest from date.

W'M H. ARENDELL.

(Across the face:) Copy.

$118.80.]

One day after date I promise to pay A. & J. Q. Wethington, or bearer, the sum of one hundred and eighteen $\frac{80}{100}$ dollars for value received, with eight per cent. interest from date.

Jan. 1st, 1868.

W'M H. ARENDELL.

(Across the face:) July 4, 1868, by dr'ft on F. W. Sims & Co., $100.00. Copy.

$143.49.] WAUKEENAH, FLA., *May 1st*, 1867.

One day after date I promise to pay A. & J. Q. Wethington, or bearer, the sum of one hundred and forty-three & $\frac{49}{100}$ dollars for value received, with eight per cent. interest from date.

W'M H. ARENDELL.

(Across the face:) Copy.

$100.00.]

One day after date I promise to pay Council Wooten, or bearer, one hundred dollars for value received, with 8 per cent. interest from date.

Feb'y 16th, 1860.

W. H. ARENDELL.

(Across the face:) Copy.

(Endorsed:) No. 160. Chancery. Jeff. circ. c't. C. B. Wooten, Elizabeth Reagan, A. & J. Q. Wethington, W'm Bellinger, Grant Scurry, O. H. Gadsden, Sallie Grantham, Norris & Moore, Holleyman &
135 Harrison, vs. W'm H. Arendell and Winaford Arendell, his wife, Alvin May, and W'm W. Gelzer, surv. part. of H. T. Slanter & Co. Bill filed April 20th, 1875. M. J. Taylor, clerk. R. B. Whitfield, counsel for plaintiffs.

STATE OF FLORIDA,
County of Jefferson:

This indenture, made and entered into on this the twenty-seventh day of February, A. D. 1868, between William H. Arendell and Winaford Arendell, his wife, party of the first part, and the legal and lawful holders of the claims hereinafter specified, held against the said party of the first part by the parties hereinafter designated, or their heirs or assigns, of the second part, witnesseth:

Whereas the said party of the first part is justly indebted to M'r's Sallie Grantham, of said county and State, in the sum of four hundred dollars and interest, as expressed in two certain promissory notes bearing date, one for one hundred and fifty dollars, on or about Jan. 1st, 1866, the other for about two hundred and fifty dollars, and to the holder of a certain promissory note given to Council Wooten, formerly of said county of Jefferson, bearing date on or about the 1st of January, 1859, in the sum of one hundred dollars, with interest thereon, and to the holder of a certain promissory note given to Holleyman & Har-
136 rison, formerly of the county of Jefferson and State of Florida, bearing date on the 25th day of March, A. D. 1867, in the sum of one hundred and forty-six & $\frac{72}{100}$ and interest, and to the holder of a certain promissory note given to Joseph Kersey, on the first day of January, A. D. 1861, in the sum of three hundred dollars and interest, and to T. J. Perkins & Company, of the county of Leon and State of Florida, or to the holder of a certain promissory note given to said firm the first day of January, A. D. 1860, or thereabouts, in the sum of about one hundred and twenty-five dollars, and to the mercantile firm of A. & J. Q. Wethington, of Waukeenah, in said county of Jefferson, in the sum of one hundred and twenty dollars or thereabouts, being an unliquidated balance due the said firm on account of goods purchased in their store for household and family use; also in the amount of one hundred and forty dollars as expressed in a certain promissory note given to the said firm on or about Feb. 1st, 1867, and to Alvin May, of the said county of Jefferson, in the sum of three hundred and twenty-five dollars or thereabouts, being

an unliquidated balance due him on account of goods purchased in his store for household and family use; and William Bellinger
137 in the sum of forty dollars or thereabouts, being an unliquidated balance due for professional services rendered in the family of the said party of the first part; and to the mercantile firm of Bellinger and Cooksey, of the said county of Jefferson, in the sum of seventy-one dollars or thereabouts, being an unliquidated balance due the said firm on account of medicines purchased at the store of the said firm for use in the family of the said party of the first part; and to Joshua Floyd, of said county of Jefferson, in the sum of thirty dollars, more or less, as expressed in a certain promissory note given on the first day of May, 1867, or thereabouts, or the holder of said note in the sum of thirty dollars as aforesaid; and to the late firm of H. T. Slanter & Co., formerly of said county of Jefferson, in the sum of one hundred and twelve dollars or thereabouts, being an unliquidated balance due the said firm on account of goods purchased at their store for household and family use (provided, however, that nothing herein contained shall be so interpreted as to make the said party of the first part responsible for a certain indebtedness incurred to the said firm, or said to be so incurred, by one Richmond Greene, a laborer, formerly in the employment of the
138 said party of the first part, whose purchases at the store of the said H. T. Slauter & Co. were charged to the account of the said W. H. Arendell, but the said party of the first part are to be held in no wise responsible for the said indebtedness, as it was wholly unauthorized by them); and to William G. Barth, of said county of Jefferson, in the sum of four hundred and fifty-seven dollars, more or less, as expressed in a certain joint promissory note bearing date on the twenty-first day of February, 1868, executed by the said William H. Arendell and William G. Barth, to the mercantile firm of Norris and Moore, of the city of New York, the balance of the indebtedness to the said firm being included in that already specified to Sallie Grantham, who has assumed the same, and Michael F. Arendell, of Carteret County, North Carolina, in the sum of one thousand and two dollars, as expressed in a certain promissory note dated in July, 1867; and whereas Grant Scurry and Alvin May became the sureties of the said William H. Arendell on his bond as guardian of R. M. Cole, and the said W. H. Arendell is indebted to the said children, as guardian, in the sum of two thousand dollars or thereabouts; and whereas the said party of the first
139 part desire to assure and secure to said *to* parties of the second part the payment of said amounts of indebtedness as hereinbefore stated, principal and interest, at as early a day as practicable, giving no one of the said creditors any preference over any or all of the others by this indenture:

This indenture therefore witnesses that in consideration as well of the foregoing as of the sum of twenty-five dollars in hand paid at and before the ensealing and delivery hereof, the receipt whereof is hereby acknowledged, the said party of the first part have given, granted, bargained, and sold, and by this indenture give, grant, bargain, sell, and convey and confirm unto the said party of the second part, their several heirs and assigns, the following-described lands and premises, situated, lying, and being in the said county of Jefferson, and known and described as follows, to wit: In section thirty-one, the northwest quarter, the west half of the northeast quarter, and the south half; in section thirty-two, the southwest quarter of the northwest quarter and the east half of the southwest quarter, all in township one, range five north and east. Also the following in township one, range five south

and east, to wit: In section six, the northwest quarter, the west
140 half of the southwest quarter, and the northeast quarter of the southwest quarter; in section seven, the northwest quarter and the south half of the northeast quarter. Also the store and lot adjacent, containing one acre, more or less, at Waukeenah, conveyed to said W. H. Arendell by Richard Lang on the 8th day of July, 1856, the record of which appears in deed-book H, fol. 266. Also the following-described personal property, to wit, eight mules, named Pete, aged ten, Pete, aged twelve, George, Bob, Tom, Jule, Jane, and Hyena, and one mare named Amelia Pasco; fifty head of cattle, more or less; thirty head of hogs, more or less; the increase of the said stock; two six-horse wagons; one buggy; all the provisions, plantation implements, and farming utensils; one cotton-gin, all the household and kitchen furniture upon the said plantation or belonging to the said party of the first part, and all the crops cultivated and raised or to be planted on the said plantation during the present year, and the annual crops hereafter to be raised on the said place until the said debts are paid and discharged; provided, however, and this indenture is given and executed only upon this condition, that if the said party of the
141 first part shall well and truly pay or cause to be paid, either himself, or his heirs, executors, administrators or assigns, unto said party of the second part, their heirs, successors, or assigns, the several amounts of indebtedness hereinbefore acknowledged and mentioned to the several parties entitled to receive the same, then this indenture and everything herein contained shall be utterly null and void, and all the estate hereby granted shall cease and determine; but if the said amounts of indebtedness, or any of them, principal or interest, or both, or any part thereof, shall still remain due and unpaid, on the first day of January, A. D. 1875, the premises hereinbefore shall thenceforth wholly vest in the lawful holders of the said claims still partially or wholly unpaid, absolutely and forever. And provided further that the said parties respectively of the second part are admitted to the terms and conditions, rights and privileges, of this indenture only upon the condition that they do not seek to harass the said party of the first part with legal proceedings to enforce the payment of the claims herein set forth and specified until after the time appointed for the settlement herein, and if any of the holders of the said claims shall institute a
142 suit for the collection of any amount herein set forth, he shall be excluded from the benefits of this indenture and shall have no rights under it, but shall stand in the same position as if this indenture had never been executed; the institution of such suit or suits by any of said parties shall be interpreted and considered as a renunciation of the security on the part of the one instituting such suit, offered and given by this indenture, so far as the one instituting such suit is concerned, and his renunciation shall enure to the benefit of the other creditors included in this indenture by increasing their security. But this exclusion shall not apply to the claim of Joseph Kersey aforesaid, which is already in suit, if the party holding such claim shall stay all proceedings after judgment. And, provided further, that the said party of the first part shall be allowed to use and possess the said lands and tenements and personal property hereinbefore described, and so much of the annual crops raised on the said place during the time specified as shall be necessary for the support and maintenance of themselves and family until the first day of January, A. D. 1875, as aforesaid,
143 without any hindrance or molestation on the part of the said party of the second part, their heirs, successors, or assigns, but

the balance of the annual crops shall be applied to the liquidation of the said indebtedness.

And the said W. Arendell has made herself a party to this indenture for the purpose of renouncing (but only under the terms of this indenture), not only all her dower and right of dower in and to the said described premises, but also all her right, claim, and interest of every description in and to the said described lands and personal property derived from and held under a certain marriage contract or settlement executed by and between the said William H. Arendell, Winaford Arendell, and Sarah B. Greene, on the 7th day of May, A. D. 1846, and to be found recorded in the public records of Marengo County, in the State of Alabama, in book L, on pages 525, 526, & 527.

In testimony whereof we, the said W. H. Arendell and Winaford Arendell, have hereunto set our hands and seals on this the day and year first herein written.

WM H. ARENDELL. [SEAL.]
WINAFORD ARENDELL. [SEAL.]

Signed, sealed, and delivered in our presence ("determine" interlined after "utterly," in 64th line, 7th page, before signing).

J. M. KILPATRICK,
J. M. EARNEST.

144 STATE OF FLORIDA,
County of Jefferson:

Know all men by these presents that I, Winaford Arendell, joined with my husband, the said W. H. Arendell, in the execution of the foregoing instrument for the purposes therein set forth, and I hereby certify that I did the same freely and voluntarily, and without any compulsion or constraint, apprehension, or fear, of or from my said husband, and separate and apart from him, and do not wish to retract the same.

Witness my hand and seal on this twenty-seventh day of February, A. D. 1868.

WINAFORD ARENDELL. [SEAL.]

Taken & acknowledged before me.

J. M. KILPATRICK,
Justice of the Peace.

JEFFERSON COUNTY:

I hereby certify that the foregoing acknowledgment was taken and made, by the said Winaford Arendell, before me separate and apart from her said husband. Witness my hand and private seal, there being no seal of office, this twenty seventh day of February, A. D. 1868.

[SEAL.] J. M. KILPATRICK.
Justice of the Peace.

145 COUNTY OF JEFFERSON:

Before the undersigned, clerk of Jefferson circuit court, came J. M. Earnest, to me known, who, being duly sworn, says that he knows the aforenamed William H. Arendell and Winaford Arendell, grantors in the foregoing deed of mortgage; and that they did, in his presence, and in the presence of J. M. Kilpatrick, sign, seal, and deliver the same as their own voluntary act for the purposes therein set forth, whereupon I have admitted the same to record.

Witness my hand and seal, as clerk of said court, this 29th day of February, A. D. 1868.

[SEAL.] S. PASCO, *Clerk.*

(Endorsed:) Recorded in clerk's office in Jefferson circuit court, in Deed Book Lib. K, fol. 299–302.

EXHIBIT .

Second judicial circuit of Florida, in Jefferson circuit court. In chancery.

C. B. WOOTEN, ELIZABETH RENYAN, A. & J. Q. Withington, W'm Bellinger, Grant Scurry, O. H. Gadsden, Sallie Grantham, Norris & Moore, and Holleyman & Harrison,

vs.

W'M H. ARENDELL & WINAFORD ARENDELL, his wife, Alvin May and W'm W. Gelzer, as surviving partners of the late firm of H. T. Slanter & Co.

146 This day this cause came on to be heard upon the report of the master herein of the several causes of action secured by the mortgage mentioned in the complainants' bill, and it appearing that this cause is proceeding ex parte against all of the defendants, and it further appearing from the said report that the several amounts therein reported as due upon said mortgage August 20th, 1875, are just and correct, on motion of R. B. Whitfield, esq., counsel for complainants, it is ordered that A. & J. Q. Withington do have judgment against the defendant William H. Arendell for the sum of two hundred and seventy five & $\frac{96}{100}$ dollars (275\frac{96}{100}$); that Holleyman and Harrison do have judgment against the defendant William H. Arendell for the sum of two hundred and forty-five & $\frac{38}{100}$ (245\frac{38}{100}$); that Council B. Wooten do have judgment against the defendant William H. Arendell for the sum of two hundred and twenty-four & $\frac{09}{100}$ dollars ($224.09); that Sallie Grantham do have judgment against the defendant William H. Arendell for the sum of two hundred and fifty-nine & $\frac{10}{100}$ dollars ($259.10); that William Bellinger do have judgment against the defendant William H.

147 Arendell for the sum of two hundred and sixty-seven & $\frac{78}{100}$ dollars ($267.78); that Norris & Moore do have judgment against the defendant William H. Arendell for the sum of four hundred & thirty-six & $\frac{71}{100}$ dollars (436\frac{71}{100}$); that S. Pasco, as executor of the last will and testament of R. McB. Cole, do have judgment against the defendant William H. Arendell for the sum of six hundred and ninety-nine & $\frac{53}{100}$ dollars (699\frac{53}{100}$); that S. Pasco, as assignee of the amounts due W. L. Cole and A. J. Cunningham, children of the late R. M. Cole, dec'd, do have judgment against the defendant W. H. Arendell for the sum of three hundred and eighty-four & $\frac{23}{100}$ dollars ($394.23); that Elizabeth Reagan do have judgment against the defendant William H. Arendell for the sum of six hundred and ninety-seven & $\frac{33}{100}$ dollars ($697.33); and that said William H. Arendell do pay the said several sums to the said parties in whose favor judgment is hereby given, or to their counsel, with interest on the same from the 20th of August, A. D. 1875, on or before September the 10th, A. D. 1875; and in default of such payment, that all of the said defendants and all persons claiming by, through, or under them, be and they are hereby barred and forever foreclosed

148 of all equity and right of redemption in and to the following de-

scribed mortgaged premises, situated in the county of Jefferson and State of Florida, to wit:

In section thirty-one (31), the northwest quarter, the west half of the northeast quarter, and the south half; in section thirty-two (32), the southwest quarter of the northwest quarter, and the east half of the northwest quarter, and the east half of the southwest quarter, all in township one (1), range five (5) north and east.

Also, the following in tonwship one (1), range five (5) south and east, to wit: in section seven, the northwest quarter of the northwest quarter and the south half of the northeast quarter; also the store and lot adjacent, containing one acre, more or less, at Waukeenah, conveyed to said W'm H. Arendell by Richard Lang on the 8th of July, 1856, the record of which appears in deed book H, fol. 266.

Also, the following described personal property: eight mules, named Pete, aged ten; Pete, aged twelve; George, Bob, Tom, Jule, Jane, & Hyena; one mare named Amelia Pasco; fifty head of cattle, more or less; thirty head of hogs, more or less; the increase of said stock; two six-horse wagons; one buggy; all the provisions; plantation im-
149 plements and farming utensils; one cotton-gin; all the household and kitchen furniture upon said plantation or lands, or belonging to said William H. Arendell; and all the crops cultivated and raised or now being grown and cultivated on said lands, since the twenty-seventh day of February, A. D. 1868, or so much of said property as is now in existence in said county; and that William P. Marvin, one of the masters of this court, do sell the same in the manner prescribed by law and the rules of this court, and that he do apply the proceeds of said sale, first, to the payment of the costs of these proceedings, second, to the payment of the several amounts for which judgment is hereby rendered pro rata, if the same shall not be sufficient to pay said judgments in full, and that each of the said parties may have execution as at common law for any amount that may remain unpaid to them after the application of the proceeds of said sale as aforesaid.

And it is further ordered that if the proceeds of said sale shall exceed the amount due upon the judgments hereby rendered, that the surplus thereof be paid to the defendant, William H. Arendell.

And it is further ordered that the said master do proceed hereunder and report his proceedings to this court without unnecessary delay.

150 Done, ordered, and adjudged at chambers this September 6th, A. D. 1875.

(Signed) P. W. WHITE,
Judge 2nd Judicial Circuit, Florida.

STATE OF FLORIDA,
Jefferson County:

I hereby certify that above and foregoing is a true and correct copy of the final decree rendered by the circuit court of the second judicial circuit of Florida, in and for the county of Jefferson, in a certain cause in chancery wherein C. B. Wooten et al. are complainants and William H. Arendell et al. are defendants, as recorded in chancery order-book A of said court, on pages 305, 306, & 307. As witness my hand & seal this 18th day of September, A. D. 1875

T. L. CLARKE, [SEAL.]
Examiner.

151 EXHIBIT F.

32) Kit.....	150	*	Asa May....434	(33
			423	
			11	
*Bede.....	140 00		Heur....160	
		3)842	J J	
*Jerry.....	150 00	280		
			※ 1–432	
John	125 00	140	2–453	
		156	3–378	
*Jones.....	75 00	160		
		125	3)1265	
*Pete.....	100 00	140		
		125	423	
*Black Snake	160 00	8)850	8.42	
		140	For Sloan:	
*Dave	125 00		Eliza..... 160	
Frank	140 00		John..... 125	
		696		
Eliza	160 00		Kit 150	
*Fly.....	65 00	Beds, mule.	Coly..... 125	
*Nelly.....	125 00		Henry ... 160	
Coty.....	125 00		Jonah.... 100	
		17)1380(116		
		17	6)820	
Jonah	100 00		136.66	
		28		
		17		
Henry	160 00	110		
		102		
*Ned	40 00	8		
		1830(116		
*Tom.....	40 00	150		
	1790	1980	Red Reddick.	
			By 9 bu. corn.	
		160		
		130		
		125		
		100		

152 And on the same day, to wit, Jan. 10, A. D. 1876, the following petition was filed, which petition is in the words and figures following, to wit:

Circuit court 2nd judicial circuit of the State of Florida, in and for Jefferson County. In chancery.

ANDREW M. SLOAN, COMPLAINANT,
vs.
ASA MAY, DEFENDANT.

To the honorable P. W. White, judge of the circuit court of the second judicial circuit of Florida:

Your petitioner, Andrew M. Sloan, the complainant in the above-stated suit, represents unto your honor that he was at the commencement of said suit, and has ever since been, and is now, a citizen and resident of the State of Georgia, and that the defendant therein, Asa May, was at the commencement of said suit, and has ever since been, and is now, a citizen and resident of the State of Florida.

Your petitioner further represents that the bill of complaint in said suit, the same being a suit in chancery, was filed in the office of the clerk of the circuit court of Jefferson County, State of Florida, on the fourteenth day of January, A. D. eighteen hundred and seventy-

153 five, as will appear by the file-mark on said bill; that in said bill of complaint and suit in chancery your petitioner claims that he is in possession of and the purchaser of the following lands and real estate lying and being in Jefferson County aforesaid, and known and described as follows, to wit:

All of section fifteen (15) in township one south, range four east; the southwest quarter and the west half of the southeast quarter, and the west half of the northeast quarter, and the east half of the northwest quarter, and twenty-eight and one-half acres in the west half of the northwest quarter (said 28½ acres being the land bought of Joseph Reed by Alvin May), and the west half of the southeast quarter of the northeast quarter; all said last-described lands being in section ten (10), township one, of range four south and east, and that the same were purchased by him, the complainant, from one Alvin May, under an agreement of December 13, A. D. 1873, in said bill referred to, and that the same were bid in at sheriff's sale on the first Monday in January, A. D. 1874, being the fifth day of said month, by the defendant Asa May, and the legal title thereto conveyed by the sheriff of said county to said Asa, January 6, A. D. 1874, and that the said lands were bid in by said Asa

154 May under an agreement and understanding between your petitioner and said Asa May, by which the said Asa May was to convey said lands to your petitioner after bidding in the at sheriff's sale, and thus your petitioner was to acquire the title thereto.

The executions or writs of fi. fa. under which the same were sold at said sheriff's sale being, as stated in said bill of complaint, writs of execution issued out of the clerk's office of Jefferson County upon judgments rendered against said Alvin May, all of which will more fully appear by reference to said bill of complaint.

In and by said bill of complaint your petitioner prays that it may be decreed that your petitioner is entitled to have the land aforesaid, purchased by him from Alvin May, conveyed to petitioner by said Asa May, and that said Asa May be decreed to convey to your petitioner by a proper deed to be executed by him according to law the said lands, and

upon failure of said Asa May to do so, that it may be decreed that the master of this court do convey said land to your petitioner so as to vest the legal title thereto in your petitioner and divest the said Asa May thereof, and that it may be decreed that the said Asa May be perpetually enjoined and restrained from attempting to obtain possession
155 of said lands and from instituting any proceeding, either at law or in equity, to obtain possession of the same, or from asserting any right or title thereto; and that until the final hearing and decree in said cause the said Asa May be enjoined and restrained from any effort to obtain possession of said land and from proceeding in any manner or from taking any steps to assert any right or title thereto, or to dispossess the petitioner thereof, and also prays general relief.

Your petitioner further represents that on the fifth day of April, A. D. 1875, the said defendant Asa May filed his answer to said bill, and that afterwards the complainant, your petitioner, filed the usual replication to said answer, and the case is thus at issue and the testimony in said cause has been taken and filed, but the said cause or suit has not been tried, nor has there been any trial thereof.

Your petitioner further represents and shows unto your honor that the defendant Asa May, as will appear by the pleadings in said cause, has not conveyed said lands or any part thereof to the petitioner, but he claims that he bid in said lands for his own use and that he is under no obligation to convey or make a title of the same to your petitioner, but the same are his own property.

156 And your petitioner further represents that said lands are of great value, to wit, of the value of at least dollars, and the matter in dispute thus exceeds, exclusive of costs, the value of five hundred dollars.

And your petitioner further represents unto your honor that he desires to remove this said suit or cause before the trial thereof into the circuit court of the United States of 5th circuit for northern district of Florida, and that the next term of said United States circuit court for the northern district of Florida is to be held in said district, at Tallahassee, commencing on the first Monday in February, A. D. 1876, and he desires to make such removal pursuant to the act of Congress in such cases made and provided, and is ready and willing to give such bond with good and sufficient surety, conditioned for his entering in such circuit court of the United States on the first day of its said next term or session a copy of the record in such suit, and for paying all costs that may be awarded by said U. S. circuit court, if such court shall hold that such suit was wrongfully or improperly removed thereto, as may be proper; and your petitioner offers herewith his bond with Joshua Floyd and Cha's A. Sloan as sureties, bearing date January 10th, A. D. 1876, and in the sum or penalty of five hundred
157 dollars, and conditioned as required by law for entering in such circuit court on the first day of its next session a copy of said record, and paying such costs as may be awarded by said U. S. circuit court, if such court shall hold that such suit is wrongfully or improperly removed thereto.

Your petitioner therefore prays that said suit may be removed unto the said United States circuit court, and that no further proceedings may be had in said circuit court of the 2nd judicial circuit of Florida aforesaid, and your petitioner as in duty bound will ever pray.

A. M. SLOAN, *Petitioner.*
GEORGE P. RANEY,
Att'y for Petitioner.

STATE OF FLORIDA,
Jefferson County:

Personally appeared Andrew M. Sloan, the petitioner, and he being duly sworn says and deposed that he has read the above petition, and that the facts stated therein are true in substance and in fact.

A. M. SLOAN.

Sworn to & subscribed before me this the 10th day of January, A. D. 1876.

M. J. TAYLOR,
Clerk of Jeff. C't C'r Fl'a.

158 And on the same day the bond for removal to U. S. circuit court was filed in words and figures as follows, to wit:

Circuit court 2nd judicial circuit of the State of Florida, in and for Jefferson County. In chancery.

ANDREW M. SLOAN, COMPL'T,
vs.
ASA MAY, DEFENDANT.

Know all men by these presents that we, Andrew M. Sloan of the city of Savannah, State of Georgia, the complainant, principal, and we, Joshua Floyd and Cha's A. Sloan of Jefferson County, State of Florida, surities, are held and firmly bound unto Asa May, the defendant, of Jefferson County, State of Florida, in the sum of five hundred dollars, lawful money of the United States of America, for the payment whereof well and truly to be made to the said Asa May, his executors, administrators, and assigns, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Signed & sealed this 10th day of January, A. D. (1876) eighteen hundred and seventy-six.

The condition of this obligation is such that whereas on the fourteenth day of January, A. D. eighteen hundred and seventy-five,
159 (1875), the said Andrew M. Sloan filed a bill of complaint in chancery in the above circuit court of the 2nd judicial circuit of Florida, in and for Jefferson County, claiming to be in possession of and the purchaser of the following lands and real estate lying and being in Jefferson County, State of Florida, and known and described as follows, to wit:

All of section fifteen in township one south, range four east; the southwest quarter and the west half of the southeast quarter, and the west half of the northeast quarter, and the east half of the northwest quarter, and twenty-eight and one-half acres in the west half of the northwest quarter, (said 28½ acres being the land bought of Joseph Reid by Alvin May), and the west half of the southeast quarter of the northeast quarter; all said last described lands being in section ten, township one, of range four south and east, and claiming that the same were purchased by him from Alvin May under an agreement of December 13, A. D. 1873, and that the same were bid in at sheriff's sale on the first Monday in January, A. D. 1874, being the fifth day of said month, by the defendant Asa May, and the legal title thereto conveyed to said Asa May, January 6th, A. D. 1874, and that said lands were
160 bid in by said Asa May under an agreement and understanding between said Andrew M. Sloan and Asa May, by which said Asa

May was to convey said lands to the said A. M. Sloan after bidding on the same at sheriff's sale, and thus the said A. M. Sloan was to acquire the title thereto, the executions or writs of fi. fa. under which the same were sold being, as stated in said bill of complaint, writs of execution issued out of the clerk's office of Jefferson County upon judgments rendered against said Alvin May; and the said Andrew M. Sloan praying in said bill of complaint that it be decreed that he is entitled to have the aforesaid lands, purchased by him from Alvin May, conveyed to him, said Sloan, by said Asa May, and that said Asa May be decreed to convey the same to said A. M. Sloan, by proper deed to be executed by him, and upon failure of said Asa to do so, that it be decreed that the master of said court convey said lands to said A. M. Sloan, so as to vest the legal title thereto in said A. M. Sloan, and divest the said Asa May thereof; and that it be decreed that said Asa May be perpetually
161 enjoined and restrained from attempting to obtain possession of said lands, and from instituting any proceeding, or taking any steps to assert any right or title thereto, or to dispossess said A. M. Sloan therefrom, and prays general relief.

And whereas the said Asa May on the fifth day of April, A. D. 1875, filed his answer to said bill, and subsequently the said Sloan filed the usual replication to said answer, and the testimony in said cause has been taken and filed, but there has been no trial of said cause, and the same is removed into the circuit court of the United States for the northern district of Florida, fifth circuit of the United States, under the act of Congress of the United States, approved March 3d, A. D. 1875, entitled "An act to determine the jurisdiction of the circuit courts of the United States and to regulate the removal of causes from the State courts, and for other purposes."

And whereas the said Andrew M. Sloan has filed herewith his petition in the said circuit court of the 2nd judicial circuit of Florida for Jefferson County, praying a removal of the said cause or case into the next circuit court of the United States in and for the northern district of Florida, to be held at Tallahassee.

Now, therefore, if the above bounden Andrew M. Sloan or his
162 legal representatives shall enter or cause to be entered in said circuit court of the United States for the northern district of Florida, on the first day of its next session to be held at Tallahassee, in said district, a copy of the record in said suit or cause, and shall pay all costs that may be awarded by the said United States circuit court, if said circuit court of the United States shall hold that said suit was improperly or wrongfully removed thereto, then this obligation shall be void, but other the same to remain in full force & effect.

A. M. SLOAN. [SEAL.]
J. FLOYD. [SEAL.]
C. A. SLOAN. [SEAL.]

Signed, sealed, and executed in our presence:
GEORGE P. RANEY.
DEAN RAIN.

Approved.

M. J. TAYLOR,
Ck Jeff. Ct Ct, Fla.

STATE OF FLORIDA,
Jefferson County:

Personally appeared Joshua Floyd and Cha's A. Sloan, of said county and State, the sureties to the above bond, wherein A. M. Sloan is prin-

cipal, and they being duly sworn deposed and say each for himself that he is worth five hundred dollars over and above his liabilities and the exemptions allowed by law.

C. A. SLOAN.
J. FLOYD.

Sworn to & subscribed before me this the 10th day of Jan'y, 1876.
M. J. TAYLOR,
C'k Cir. Court Jeff. Co., Fla.

163 I, M. J. Taylor, clerk of the circuit court of the State of Florida, second judicial circuit in and for the county of Jefferson, do hereby certify that the foregoing pages, numbered from one to one hundred and fifty-four inclusive, constitute a true copy of all the proceedings and a correct transcript of the record in the case of Andrew M. Sloan, plaintiff, and Asa May, defendant, as appears upon the files and records of my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this the twenty-eighth day of January, in the year of our Lord one thousand eight hundred and seventy-six.

[SEAL.] M. J. TAYLOR,
Clerk of the Circuit Court for the County of Jefferson, State of Florida.

(Endorsed:) Filed in the United States circuit court for the northern district of Florida, at Tallahassee, this 7th day of February, A. D. 1876. C. H. Foster, clerk, per F. T. Myers, D. C. Andrew M. Sloan against Asa May. Chancery. Geo. P. Raney, attorney for compl't.

164 And afterwards, to wit, on the 11th day of February, A. D. 1876, the final decree in said cause was entered, which is in the words and figures following, to wit:

United States circuit court, northern district of Florida, fifth circuit.

ANDREW M. SLOAN
vs.
ASA MAY. } In chancery.

This cause came on this day to be finally heard, and was argued by George P. Raney, solicitor for complainant, and by Samuel B. Stephens, solicitor for the defendant, and the court being advised of its opinion in the premises, doth order, adjudge, and decree, and it is hereby ordered, adjudged, and decreed, that the conveyance of land hereinafter described to the defendant, Asa May, by Sturgis B. Baldwin, sheriff of Jefferson County, Florida, by deed dated the sixth day of January, A. D. eighteen hundred and seventy-four, and of record in Jefferson County, Florida, the same having been bid in by said Asa May at sheriff's sale on the first Monday in January aforesaid, vested the title to said
165 lands in him subject to the right of the complainant to have a conveyance of said land to him in fee; and it is further ordered, adjudged, and decreed, that the complainant, Andrew M. Sloan, is entitled to have the following lands lying and being in Jefferson County, State of Florida, and in the northern district of said State, and known and described as follows:

All of section fifteen in township one south, range four east; the southwest quarter, the west half of the southeast quarter, and the west half

of the northeast quarter, and the east half of the northwest quarter, and twenty-eight and one-half acres in the west half of the northwest quarter, said twenty eight and one-half acres being the land bought of Joseph Reid by Alvin May (who is named in the pleadings), and the west half of the southeast quarter of the northeast quarter, all of said last described lands being in section ten, township one south, range four east, conveyed to him by the defendant, Asa May.

And it is further ordered, adjudged, and decreed that the said Asa May do, within sixty days from the date of this decree, convey to said Andrew M. Sloan in fee simple, by proper deed to be executed by him to said Sloan, according to law, the aforesaid lands; and that on
166 failure of said defendant to convey said lands and execute said deed within said time, that then Richard A. Shine, of Leon County, Florida, who is hereby appointed special master for this purpose, do, by proper deed to be executed by him, convey to said Andrew M. Sloan the said lands so as to vest the title thereto in said Sloan the same as if the said defendant had conveyed the same.

And it is further ordered, adjudged, and decreed that the said Asa May be, and is hereby, forever enjoined and restrained from attempting to hold or obtain possession of said land or any part thereof, and from interfering with the possession of said Sloan, and from asserting any right or title thereto under said deed of January sixth, eighteen hundred and seventy-four; and that the writ of injunction issue accordingly.

And it is further ordered that William P. Marion, the master of the circuit court of the second judicial circuit of Florida for Jefferson County, from which court this cause was transferred, do pay over to the complainant all the money he may have collected for rent under the order of September 24th, A. D. 1875, made by said circuit court of
167 Florida, and that he file an account of the same in the clerk's office of this court.

It is further ordered that the defendant pay the sum of one hundred and twelve dollars and sixty cents, the costs of this suit.

Done and ordered and adjudged in open court this eleventh day of February, A. D. 1876.

(Sig.) PHILIP FRASER, *Judge.*

And afterward, to wit, on the 18th day of March, A. D. 1876, the following notice of application for allowance of appeal and approval of bond was filed in words & figures as follows, to wit:

MONTICELLO, FLA., *March* 3, 1876.

GEORGE P. RANEY, Esq.,
Tallahassee, Fla.:

You will take notice, as counsel for Andrew M. Sloan, complainant in a certain cause recently tried at Tallahassee, in the circuit court of the United States, in which a final judgment was rendered against me as defendant on the eleventh day of February, A. D. 1876, that I shall apply before the Hon. Philip Fraser at Jacksonville, on Monday, the 6th day of March, A. D. 1876, at chambers, for the allowance of an appeal to the Supreme Court of the United States from the said final judgment and decree, and for the approval of the supersedeas bond required by
168 the rules of court, and if I cannot be heard on eleven o'clock a. m. on that day, then at the first convenient time thereafter, and if you have any objections to the said allowance or to the bond you will then and there appear and make them known.

(Sig.) ASA MAY.

I hereby certify and state that I mailed a true copy of the within notice to George P. Raney, esq., at Tallahassee, Florida, on Friday, March 3d, A. D. 1876, by depositing the same in an envelope in the post-office at this place (Monticello, Florida), the postage upon the said envelope containing the said copy of the said notice having been at the time fully paid.

L. PASCO.

(Endorsed:) A. M. Sloan, plaintiff, vs. Asa May, defendant. Notice for application for allowance of appeal and approval of bond. Filed M'ch 18, 1876. C. H. Foster, clerk, per F. T. Myers, D. C.

And on the same day, to wit, 18th March, 1876, the petition of appeal was filed, which is in the words and figures following, to wit:

Circuit court of the United States, fifth judicial circuit, northern district of Florida.

ANDREW M. SLOAN
vs.
ASA MAY.

169 To the honorable PHILIP FRASER:

The petition of the above-named defendant, Asa May, respectfully sets forth the following matters for the consideration of your honor, with his prayer for relief:

That on the fourteenth day of January, A. D. 1875, a bill in chancery was filed by the above-named Andrew M. Sloan against the petitioner, Asa May, in the circuit court of the second judicial circuit of the State of Florida, sitting in chancery in and for Jefferson; that the petitioner answered the said bill, and certain proceedings were had in the said cause before the said court, but before a final hearing the said complainant, claiming to act under an act of Congress recently enacted, brought the record of the said cause into this honorable court, but no order transferring the cause was ever made, nor was any petition or bond accepted by the judge of said circuit court of Jefferson County, Florida, upon which to base such transfer, nor did the said judge have any opportunity to accept such petition or bond.

That after the said cause was so brought into this honorable court, the same proceeded to a final hearing at a term of said court held at Tallahassee on the first Monday in February, A. D. 1876, and continued
170 from day to day until the eleventh day of said month, when a final decree and judgment was rendered in said cause and enrolled; that the said court adjourned from day to day until Monday, the fourteenth day of February, A. D. 1876, when the same was adjourned sine die, the said final judgment remaining as the judgment of the court, having been signed by your honor as judge holding the said term of the said court.

The petitioner further shows that the matter in dispute or controversy in said cause is a large body of land situated in Jefferson County, Florida, which the complainant is seeking to recover and obtain title to, and the same is worth, as the petitioner avers and claims, more than five thousand dollars in value.

And being dissatisfied with the said final judgment rendered as aforesaid, and standing ready to file such bond as the court shall require and approve, the same to operate as a supersedeas to the said judgment, the petitioner prays for an appeal to the Supreme Court of the United States

from the said final judgment rendered as aforesaid on the eleventh day of February, A. D. 1876, upon such terms as shall be proper and in con-
171 formity to law, and prays that his said appeal may be allowed by your honor, & he will ever pray, &c.

(Sig.) ASA MAY.

Before the undersigned, judge of the county court of Jefferson County, Florida, and ex officio a justice of the peace in and for said county, came the above-named Asa May, to me known to be the defendant in the above-stated cause, who, being duly sworn, says that the matters stated in the within petition are all within his own knowledge, and are all true and correct as stated & set forth therein.

(Sig.) ASA MAY.

Sworn to and subscribed before me this first day of March, A. D. 1876.

[SEAL.] JAMES BELL,
Co. Judge.

Supersedeas denied because not applied for within ten days from the rendition of the decree.

(Sig.) PHILIP FRASER,
Judge.

March 6th, 1876.

(Endorsed:) A. M. Sloan, plaintiff, vs. Asa May, defendant. Petition of appeal. Filed March 18th, 1876. Cha's H. Foster, clerk. By F. T. Myers, D. C.

And on the same day, to wit, the 18th of March, A. D. 1876, the supersedeas bond was filed, which bond is in the words and figures following, to wit:

172 Know all men by these presents that we, Asa May, Joel M. Morris, and A. Florida Finlayson, are held and firmly bound unto Andrew M. Sloan in the full and just sum of five thousand dollars, to be paid to the said Andrew M. Sloan, his certain attorney, executors, administrators, or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents. Sealed with our seals and dated this fourth day of March, in the year of our Lord one thousand eight hundred and seventy-six.

Whereas lately at a circuit court of the United States, fifth judicial circuit for the northern district of Florida, held at Tallahassee, Florida, on Friday the 11th day of February, in the year of our Lord one thousand eight hundred and seventy-six, in a suit depending in said court between Andrew M. Sloan, as plaintiff, and Asa May, as defendant, a judgment or final decree was rendered against the said Asa May, and the said Asa May having applied for an allowance of appeal and filed a copy thereof in the clerk's office of the said court to reverse the said judgment or final decree in the aforesaid suit, and a citation directed
173 to the said Andrew M. Sloan, citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington, the second Monday of October next:

Now, the condition of the above obligation is such that if the said Asa May shall prosecute his said appeal to effect, and answer all damages

and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

ASA MAY. [SEAL.]
JOEL M. MORRIS. [SEAL.]
A. F. FINLAYSON. [SEAL.]

Sealed and delivered in presence of—
JOHN A. EDWARDS.
THOMAS ALLEN.
A. J. LEA.
JA'S Y. JONES.

Approved by—
Approved.

PHILIP FRASER, *Judge.*

Before the undersigned, a justice of the peace in and for said county, personally came the said Asa May, Joel Morris, and A. F. Finlayson, who being duly sworn say, respectively, the said Asa May, that he is worth the sum of twenty thousand dollars over and above his debts and liabilities and exemptions allowed by law; the said Joel M. Morris, that he is worth the sum of two thousand dollars over and above
174 his debts, liabilities, and exemptions allowed by law; and the dollars over and above his debts, liabilities, and exemptions allowed by said A. F. Finlayson, that he is worth the sum of five thousand law.

And also came the said parties and acknowledged that they signed, sealed, and delivered the above instrument for the purposes therein set forth freely and voluntarily.

ASA MAY.
JOEL M. MORRIS.
A. F. FINLAYSON.

Subscribed, sworn to, and acknowledged before me this 4th day of March, A. D. 1876.

W'M W. WYNN,
Justice of the Peace.

I, Jesse D. Cole, collector of revenue for Jefferson County, Florida, do hereby certify that the aggregate amount of real and personal property upon which the within-named parties were taxed, according to the tax-books of said county, for the year A. D. (1875) one thousand eight hundred and seventy-five, is as follows: the said Asa May the sum of thirty-nine thousand three hundred and seventy dollars in his own right; the said Joel M. Morris, three thousand one hundred and fifty dollars in his own right; and the said A. Florida Finlayson, twenty-five thousand seven hundred and eighty dollars in her own right.

175 Witness my official signature as collector of revenue in and for said county this fourth day of March, A. D. 1876.

J. D. COLE,
Collector Revenue, Jefferson Co.

STATE OF FLORIDA,
Jefferson County:

I, Moses J. Taylor, clerk of the circuit court of Jefferson County, Florida, do hereby certify that the within-named William W. Wynn, whose signature is attached to the within affidavit, is a justice of the peace in and for said county, and that Jesse D. Cole, whose signature is attached to

the above certificate, is the collector of revenue of said county, both actually qualified and serving as such.

I further certify that there are no liens or incumbrances of record in my office as such clerk against the said Asa May, Joel M. Morris, and A. Florida Finlayson, all of whom are citizens of this county, well known to me, except a judgment against the said Asa May, upon which a small amount appears to be due.

Witness my official signature and the seal of said court this fourth day of March, anno Domini one thousand eight hundred and seventy-six.

[SEAL.] M. J. TAYLOR,
Clerk of Circuit Court of Jefferson County, Florida.

176 (Endorsed:) A. M. Sloan, plaintiff, vs. Asa May, defendant. Supersedeas bond. Filed M'ch 18, 1876. C. H. Foster, clerk, per F. T. Myers, D. C.

And on the same day, to wit, on the 18th day of March, A. D. 1876, a writ of citation was filed in my office, which is in the words and figures following, to wit:

The United States of America to Andrew M. Sloan, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to an allowance of appeal filed in the clerk's office of the circuit court of the United States for the fifth judicial circuit for the northern district of Florida, wherein Asa May is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment or final decree rendered against the plaintiff in error, as in the said allowance of appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

177 Witness the honorable Philip Fraser, judge of the said court, this 14th day of March, in the year of our Lord one thousand eight hundred and seventy-six.

(Sig') PHILIP FRASER,
Judge.

(Endorsed:) A. M. Sloan, plaintiff, vs. Asa May, defendant. Citation. Filed M'ch 18th, 1876. C. H. Foster, clerk, per F. T. Myers, d. c.

Andrew M. Sloan cannot be found within the northern dist. of Fl'a. Sept. 14th, 1876.

S. CONANT,
U. S. Marshal.

Returned & filed in my office Sept. 16th, 1876.

C. H. FOSTER, *Clerk*,
By F. T. MYERS, *D. C.*

And the following is attached to the writ:

Citation.

UNITED STATES MARSHAL'S OFFICE,
NORTHERN DISTRICT OF FLORIDA,
Jacksonville, Fla, Sept. 20th, 1876.

MAY
vs.
SLOAN.

S. B. Baldwin is hereby appointed special deputy to serve the
178 within writ of citation.

S. CONANT,
U. S. Marshal.

The writ further has the following endorsement:

Came to hand & service perfected by delivering a true copy of the within to the said Andrew M. Sloan, and at the same time exhibiting this writ, in Jefferson County, Florida, this 30th day of September, A. D. 1876.

S. CONANT,
U. S. Marshal.
By S. B. BALDWIN,
S. D. U. S. M.

Service, 50; copy, 40; ret'n, 10—1.00.

Rec'd my costs of Asa May, Sept. 30th, 1876.

S. B. BALDWIN,
S. D. U. S. M.

Returned & filed Oct. 2d, 1876.

C. H. FOSTER, *Clerk.*
Per F. T. MYERS, *D. C.*

179 I, Cha's H. Foster, clerk of the United States circuit court, fifth judicial circuit, northern district of Florida, middle division, do hereby certify that the foregoing pages, numbered from one to one hundred and seventy-eight, inclusive, constitute a true and correct transcript of the record and proceedings in said court, in a certain cause wherein Andrew M. Sloan was complainant and Asa May was defendant.

In testimony whereof I have hereunto set my hand and affixed the seal of said United States circuit court, at Tallahassee, Florida, this third day of October, A. D. one thousand eight hundred & seventy-six.

[SEAL.]

CHA'S H. FOSTER,
Clerk of U. S. Circuit Court Northern District of Florida.
By FRED. T. MYERS,
Deputy Clerk.

(Indorsed:) U. S. circuit court, northern district of Florida. Andrew M. Sloan, complainant, vs. Asa May, defendant. Record.

(Indorsement on cover:) No. 231. Asa May, appellant, vs. Andrew M. Sloan. N. Florida C. C. U. S. Filed 13th October, 1876.

In the Supreme Court of the United States.

OCTOBER TERM, 1879.

No. 34.

E. M. May

SAMUEL PASCO AND OTHERS, EXECUTORS, &c., APPELLANTS.

vs.

Rice assignee &c of

A. M. SLOAN.

Circuit Court of the United States for the Northern District of Florida.

Brief for the Appellants.

S. F. PHILLIPS,
For Appellants.

Judd & Detweiler, Printers.

Supreme Court of the United States.

OCTOBER TERM, 1879.

No. 34.

E. de. Leary

~~SAMUEL PASCO~~ AND OTHERS, EXECUTORS, &c., APPELLANTS,

vs.

Rice, assignee &c of

A. M. SLOAN.

Circuit Court of the United States for the Northern District of Florida.

BRIEF FOR THE APPELLANT.

The original parties to this case were severally creditors for considerable amounts of Alvin May, of Jefferson county, Florida, the debts being secured by mortgages upon lands and personal property. The mortgage to Sloan, which was *junior*, covered all the lands previously conveyed to Asa May, and a large body of other lands. In January, 1874, the property being about to be sold to satisfy these debts, an agreement was made between the creditors and the debtor. The present dispute is as to the meaning of that agreement. Sloan contends that the agreement was partly *oral*, as well as written; and that by it Asa May waived his priority, to a certain extent. Asa May denies that there was any *oral* agreement, and also that in any way he waived his priority.

Brn Leary, & A. de. Sloan.

In January, 1875, Sloan filed the present bill in a State court of Florida, to enforce his view of the contract. Afterwards, in January, 1876, being a citizen of Georgia, he removed the cause into the circuit court of the United States. In February, 1876, he obtained a decree, before Judge Frazer,—and thereupon Asa May appealed.

The bill alleges, in substance, that in January, 1877, Alvin May, being debtor, for advances, to A. M. Sloan & Co., of Savannah, Georgia, gave them therefor three notes payable, respectively, upon the first days of January, 1873, 1874, and 1875,—the first being for $16,834.28, the second for $18,777.14, and the third for $20,696.78, and also that he secured these by two mortgages, executed January 18, 1874; *one*, for certain land in Jefferson county, viz., (1.) The Elbow tract, 660 acres; (2.) Arendell place, 1,020 acres; (3.) Asa-May place, 1,200 acres; (4.) S. F. May place, 150 acres; (5.) McCain place, 1,100 acres, and, (6,) Lang and Picolata places, 1,800 acres: in all 5,930 acres; *the other mortgage* conveying all the stock, mules, &c., owned by Alvin May in said county, and the crops of corn and cotton for the year 1872:

That, in 1868 Asa May sold to Alvin May the land known as the Asa-May place, containing about 1,100 acres, and all the stock thereon,—for about $20,700 in currency,—reduced by the parties to $14,848.50, *specie*,—and for this Alvin May gave seven notes for $2,000 each, and one for $848.50, payable, respectively, upon the first days of January, from 1869 to 1876, inclusive; and also secured them by a mortgage executed January 21, 1868, for certain land (described in terms of United States surveys, but including the said Asa-May place and the *Lang* and *Picolata* places, all of which were subsequently mortgaged to Sloan & Co.,) and also all of the personal property then or afterwards used in cultivating the lands conveyed, or upon the same:

That, the Sloan & Co. mortgage covered, beside the land

mortgaged to Asa May some 3,000 acres of other land; that the *Lang* place included the Lang place proper, (640 acres,) and the Alvin-May home place, (320 acres,) and that Alvin May had no title to a part of the Elbow place and to the McCain place, so that the Sloan & Co. mortgage failed therein:

That, Sloan & Co. transferred their debt and mortgage to Sloan, and that on the 8th day of May, 1873, he and Asa May recovered judgments against Alvin May for $13,811.66, (folio 37 correcting folio 8,) and $5,782.15, respectively, and that executions thereon were received by the sheriff of Jefferson county upon the 24th of June, 1873:

That, upon the 13th of December, 1873, Sloan and Alvin May made the following agreement, (Exhibit F, folio 39):

STATE OF FLORIDA,
County of Jefferson:

Memorandum made and entered into this 13th day of December, A. D. 1873, by and between Alvin May and Andrew M. Sloan, relative to the sale of the lands and personal property hereinafter specified.

The said May, in consideration of one dollar in hand paid, of twenty-one thousand dollars to be paid by the said Sloan, bargains and sells to the said Sloan the lands owned by him in said county, known as the Lang place, the Gamble Eighth, the Harvey Forty, and twenty acres belonging to the Gorman Eighth, and the Murray land, comprising eleven hundred acres, more or less; also, six mules, one thousand bushels of corn, one four-horse and one two-horse wagon, the said lands comprising the home settlement, the house formerly occupied by the said Alvin May, and the other tenements and improvements thereon. The said May is to give a good title to the same, and the same is to sell in such way as to make the title perfect at sheriff's sale if necessary to satisfy judgments now upon the record, or mortgages now existing, and the payments are to be made upon the claims existing against the said May, and in favor of the said Sloan. The said Sloan is to have possession immediately, and the said May is to vacate the houses by the first day of January, or sooner, if possible.

Witness our hands and seals this 13th of December, A. D. 1873.

A. M. SLOAN. [SEAL.]
ALVIN MAY. [SEAL.]

Signed, sealed, and delivered in our presence—
A. DENHAM.
M. PALMER.

That, the title to the *Murray place* failed for about 160 acres:

That, after one *postponement*, it was agreed by Alvin May that the sale under the executions and mortgages should take place on the first Monday (5th day) of January, 1874. There were other executions besides those of Asa May and Sloan, but of all Asa May's had priority, and next came Sloan's:

That, negotiations as to their claims were entered into between Sloan, Asa May, and Alvin May, and upon the 5th day of January, 1874, [the day of sale,] the following written agreement was made, (Exhibit H, folio 42):

Memorandum of propositions to Alvin May by Asa May and A. M. Sloan, relative to settlement of indebtedness:

The property subject to the mortgages and execution of the said May and Sloan is to be sold on the first Monday in January, 1874, under the executions against Alvin May. Unless there are other purchasers ready to bid the amount of Asa May's claim, he is to buy in the property for his own use.

If Asa May buys the property he agrees that if Alvin May and wife will relinquish all right and title, including her right of dower, to the property sold, that the Arendell plantation shall be given up to Alvin May, that Asa May will pay up or guarantee the payment of the balance due to Arendell's creditors on the Arendell place, the said amount not to exceed three thousand dollars at the present time, and that the said Asa May and Sloan will make no further

claim to the said place, and will permit the title to rest in Alvin May or his wife.

Asa May and Sloan bind themselves to make no further personal claim upon Alvin May on account of the mortgage and judgment debts of theirs against him; Asa May agrees to let Alvin May have mules of those bought in, and bushels of corn, and pounds of fodder to enable him to work the Arendell place, the value of the mules to be deducted from the $3,000. Alvin May is to give peaceable possession of the property as soon as possible, so as to enable Asa May to proceed at once to make his arrangements for the coming year.

Alvin May is to bring up a memorandum of all the property subject to the mortgage and executions against him, early on the morning of the sale, and is to get in as many as possible of the mules sold by him and not paid for or paid for only in part. The amount of three thousand dollars embraces the entire amount to be paid by Asa May, whether it is paid on the land, in mules, or in any other manner. Asa May agrees not to interfere with any bona-fide trades made by Alvin May so far as any of the mortgaged property is concerned, provided the trades have been carried out in good faith and completed.

Witness our hands and seals this fifth day of January, A. D. 1874.

ASA MAY. [SEAL.]
A. M. SLOAN. [SEAL.]
ALVIN MAY. [SEAL.]

Executed in our presence:
A. DENHAM.
S. PASCO.

That, "Although a clause in said agreement declares that unless there are other purchasers ready to bid the amount of Asa May's claim, he is to buy in the property for his own use, the real purpose was, and it was so understood and agreed that the purchase was to be made by said Asa May of all the property to be sold, and that he was afterwards to convey to your orator in full title the lands purchased by your orators from Alvin May, on the 13th of December, 1873, and also to turn over and transfer the six mules and

wagons and corn purchased as aforesaid, as expressed in said agreement. That the last clause in said agreement was inserted after the former part had been written, for the express purpose of securing to your orator the verbal understanding and agreement, as aforesaid, to convey the land and mules, wagons and corn, to your orator by said Asa May, as aforesaid. That the trade * * of the 13th of December, 1873, * * was the special trade intended to be referred to by said last clause of the agreement of the 5th of January, 1874. * * That your orator went into possession of said lands, and after the sale * * the mules bought by said Asa May were valued and six average mules were turned over and delivered to your orator according to the understanding and agreement of the parties. The wagons were also turned over to your orator," (folios 11 and 12:)

That such agreement to convey the land, &c., between Asa May and Sloan, was known to Alvin May, (folio 14:) and if it be suggested that, under the view taken by Asa May, Sloan has been deprived of no right, but can still fall back on his mortgage, it is still true that *Alvin May* will be deprived of the benefits which he intended to secure, and the agreement be beneficial to Asa May alone, who secured thereby the abstinence of Sloan as competitor at the sale, (folio 15:)

That the sale took place under the executions, and Asa May bought the land at 50 cents per acre, and obtained a deed therefor from the sheriff: That Asa May has refused to execute a deed to Sloan, as agreed upon, and claims the land as his own, and has demanded possession from Sloan: That by agreement at the sheriff's sale the corn mentioned in the agreement with Alvin May was bid off by Sloan, and that as he was afterwards disappointed in procuring hands to cultivate all the lands aforesaid, he let Asa

May have a part of it, and he paid Sloan $300 therefor, (folio 18:)

The prayer is for an answer, &c., and that a decree be made that Asa May shall convey to Sloan the land bought by the latter, of Alvin May, on the 13th of December, 1873, and that he be enjoined from bringing suit at law to turn Sloan out of possession.

The mortgages to Sloan (folios 21 and 26) and to Asa May, (folio 29); the papers of December 13, 1873, (folio 39,) and January 5, 1874, (folio 42); the execution in favor of Asa May (folio 35) and of Sloan, (folio 37); an agreement by Alvin May that the sale shall proceed, (folio 40,) and the deed from the sheriff to Asa May, are made exhibits to the bill.

The Answer was filed on the 5th of April, 1875, (folio 50.)

It admits in general the existence of the mortgages, judgments, executions, and written agreements of December 13th, 1873, and January 5th, 1874, the purchase by himself and the conveyance to him by the sheriff, as stated in the bill: It alleges that the only lands levied on by the sheriff were those that had been mortgaged to the defendant; and that at the time of such sale the debt due by mortgage to the defendant (including amounts not sued upon) was $13,293.55: In order to make a final settlement of the entire mortgage indebtedness satisfactory to all parties, the defendant entered into the agreement of January 5, 1874, by the terms of which Alvin May was to bring up to sale as many as possible of the mules sold by him and not paid for or paid for only in part, &c., (folio 53;) that after the sale, and before their removal from the plantation of Alvin May, *he* took possession of and retained fourteen of the mules, two horses, and some other property,

(folio 55,) and that some of these afterwards went into Sloan's hands, but by no act or assent of defendant:

That (folio 54) the proceeds of the sheriff's sale were applied in the manner which appears by his return, (Exhibit C, folio 62:) That the value of these lands had so depreciated as to be insufficient to pay the mortgage debt due to the defendant, yet defendant was willing to release all further claims upon his debtor; he "denies that there was any agreement or understanding between him and the complainant that he was to convey any portion of the property so purchased, as aforesaid, to the claimant, or was to hold the same for his use and benefit; but, on the contrary, he avers he made the purchase for his own use and benefit, untrammelled by any conditions or agreements whatsoever;" that at no time did he ever assume any liability in connection with the agreement of December 13, 1873, nor did he ever receive any consideration to do so; that the last clause in the January agreement was not inserted at the instance of Sloan, but for the satisfaction of Alvin May, to protect persons who had, in good faith, performed their contracts with him for the purchase of certain mules that were subject to the mortgage, (folio 56:)

That Sloan had the right to, and did, bid for a portion of the property, defendant having no interest to prevent him, and being desirous that the property should bring the highest price, and that the defendant bid it in because no one would bid higher; that he subsequently offered to Sloan to have the property resold if he thought it should have sold higher, but the offer was declined; that the lands embraced in Sloan's mortgage and not in defendant's, were subject to liens of older date than that of Sloan, and for a larger amount than they were worth; that Alvin May never had any title to the Arendell Place; that defendant, during 1874, cultivated a part of the Lang Place, not on account of any agreement with Sloan, but as the owner

thereof; that Sloan cultivated a small portion of it, defendant expecting to receive rent therefor when they should have a settlement, there having been, for a series of years, large transactions between them, some of which were still unsettled: that in September, 1874, in order that defendant might rent whatever land Sloan did not want for the ensuing year, he wrote to the latter to find this out; then for the first time, and to his utter surprise he was informed of the preposterous claim set up by the complainant, &c., (folio 60;) that although the lands have, since his purchase, by repairs and improvements, been greatly enhanced in value, he proffers to convey them to the complainant, or any person he may desire, upon payment of the amount of his mortgage debt at the time of the sale.

As an exhibit to the answer is filed a copy of Alvin May's consent to the sale of January 5, 1874, executed upon that day, (folio 61.)

To this answer a Replication was put in on the 26th of April, 1875, (folio 65.)

Evidence.

Sloan, (for himself.) In the winter and spring of 1873 Asa May and he consulted together frequently about their debts against Alvin May: they both employed the same lawyer to take judgment; in November or the first of December, 1873, witness proposed to Asa May to place Alvin May on the McCain place and let him have mules to cultivate it, and that Asa May should take the Asa-May, Lang, and Picolata places, and have the same managed, &c., and receive every year $2,000 of the net proceeds until his debt was paid, and surplus to go to claim of witness. Asa May refused: Thereupon witness saw Alvin May and made the agreement of December 13, 1873, and immediately took possession of the lands mentioned therein, excepting the

houses, which he was to have January 1, 1874, or sooner if possible: On the morning of January 5th, 1874, Asa May, witness, and Alvin May, went to Mr. Pasco's office: "Mr. Pasco then read to us the agreement of January 5, 1874, and when it was read I objected to it, because it did not protect me in the lands and personal property which I was to have under the agreement of December 13, 1873. Whereupon, upon my making this objection, the last clause in the agreement of January 5th, 1874, was added, and then the agreement was signed by all three of us. * * Mr. Pasco, Mr. Asa May, Mr. Alvin May, and myself were present when I made the objection to the agreement of January 5, 1874, which resulted in the addition of the last clause. The agreement of December 13, 1873, and all the papers were there:" At the sale Asa May bid in all the property excepting such articles (corn, fodder, &c.) as Exhibit C to defendant's answer shows that witness bought: The six mules were delivered by Asa May to witness on January 6, 1874; The corn and fodder that he bought, and the two wagons mentioned in the December agreement were delivered at same time: There was an appraisement a day or two after the sale, in order to arrive at an equitable division of the mules: Asa May, Alvin May, the appraisers, and witness, were present thereat: Witness afterwards sold the corn, fodder, and mules to Asa May, and has been paid for them; witness had to sue him in order to obtain the price of the mules: Asa May's possession of part of the Lang place in 1874, &c., was by express permission of witness: Asa May knew of the December agreement prior to the sale, and made no objection to it: Witness has never been called upon by the sheriff to settle for things bought at sale, as everything was turned over to Asa May to enable him to carry out the agreement prior to the sale:

Cross-examined: The agreement of December 13, 1873, was shown to Asa May by Mr. Pasco on the 5th of January, 1874, before the sale: "I saw Mr. Pasco hand it to

Asa May, and he read it and he made no remark, *pro or con:*" The agreement mentioned in my direct examination wherein I stated that Mr. Asa May was to bid in the property at that sale, and afterwards make me title to the property mentioned in the agreement of 13th December, 1873, was not in writing: It was a verbal agreement made in the office of Mr. Pasco, on the morning of the 5th of January, 1874, before the sale, no persons being present except Alvin May, complainant, Mr. Pasco and Asa May:" The 748 bushels of corn bid off by Mr. Whitfield were taken by witness at that price; but he never received the 722½ bushels on the Arendell place: Witness does not know by what authority Asa May delivered to him the corn and fodder; witness bid off a four-horse wagon at the sale, but does not know whether that he received from Asa May was the same: "I bid off one four-horse wagon, and I got one four-horse wagon:" Witness held a statutory lien on the crops of 1873 of Alvin May, but received nothing thereon at the sale, but the corn and fodder were turned over to Asa May, to carry out the compromise agreement: The property was on the lands bought by Asa May.

Floyd (for Sloan, folio 91) proves that Sloan began to sow oats, &c., about January 1, 1874, also the receipt of mules and wagons, and that Asa May took the mules back upon agreement to make all right with Sloan.

Charles A. Sloan, (for the complainant, *his father*, folio 92.) About 1st January, 1874, his father put him in possession of the Alvin May home place. In December, 1873, at Savannah, Asa May told him that that place had cost his father enough to be good land. This is part of the Lang place. Father has been in possession ever since.

Cross-examined: Asa May has had some tenants on this

land. Witness ran *two* ploughs there last year, and Asa May *three;* this year witness ran *three*, and Asa May *seven.*

Tabb, (folio 94,) was, by the request of Asa May, one of the appraisers spoken of, but knows nothing of any agreement between complainant and defendant.

Scurry, (for defendant, folio 95,) in January, 1874, applied to Asa May to rent part of Lang place, and was told he could have it, but was disappointed in getting hands, and so declined.

Bailey, (for defendant, folio 96.) In 1874 a portion of the Alvin May home place was cultivated by Charles A. Sloan, and another part by Asa May. In July, 1874, had a conversation with C. A. Sloan, and was told by him that the land belonged to Asa May, and that *he* rented from him.

Asa May, (for himself, folio 96.) On the 5th of January, 1874, Mr. Pasco took Sloan and witness into his back room and read the paper of that date to them, and they made no objection; after this Alvin May was called in; upon the paper being read to him he suggested an addition to protect some laborers on his place to whom he had sold mules that had been paid for,—upon which an additional clause was written. It was added at the suggestion of Alvin May, and not at that of Sloan. There was no reference at that time to any contract between Alvin May and Sloan. Witness has read the paper of December 13, 1873, "for the first time this morning." Neither it nor any copy of it was handed to him or read to him by Mr. Pasco or any one else at the time of the agreement of January 5, 1874, or at any time previous thereto. There was no verbal agreement between Sloan and witness on the 5th of January, 1874, or at any other time, different from the written agreement of that date; "there was no verbal agreement of any kind between us;"

there was no agreement between witness and any other person, but no one was to bid against witness at the sale, but witness intended to bid the amount of his mortgage debt; there was no agreement that witness should convey the lands to Sloan; the land had greatly depreciated in value between the time of the mortgage and that of the sale; there was no express contract between Sloan and witness as to rent, *one-third of the crop* being customary; was at the Asa May place shortly after the sale; Alvin May and Sloan were present; as witness was bound by the January agreement to pay Alvin May $3,000, he was not particular how many mules he took; had them appraised in order to know what to charge him; did not deliver them to any one; did not object to their being taken for the reasons stated; they were not delivered on account of any agreement or understanding between Sloan and witness; did not deliver any corn or fodder to Sloan; will not say positively that writing passed between Sloan and himself as to the December agreement, but is positive that he never consented thereto in any way.

Cross-examined: Knows of no reason why Sloan signed the January agreement.

Recalled: The quantity of land and number of mules worked by Sloan and witness respectively, on the Lang place, was: *Sloan*, in 1874, two mules and 65 or 70 acres; in 1875, three mules and 100 acres: *Witness*, in 1874, three mules and 100 acres; in 1875, eleven mules and 370 acres.

Mr. Pasco, (folio 103.) The agreement of January 5, 1874, was first submitted to Sloan and Asa May. The last paragraph had not then been written. As it then stood it was acceptable to them. Mr. Alvin May was then called in, and the paper read to him. He declined to sign it, saying that he had long regarded the property as his own, and had traded a good deal of the personal property in good faith, and could not consent that such parties should suffer, &c.;

thereupon the last paragraph [sentence?] was added. There was no intention of making it contradict the second paragraph [sentence ?]. It was added at the sole suggestion of Alvin May. There was no reference at that time to the December agreement; believes that it was not exhibited in the room that day; is confident that he did not exhibit it. There was no agreement between Sloan and Asa May on that occasion to effect that the latter should bid off the property, and afterwards convey a portion of it to Sloan. There was no other agreement than the one reduced to writing. Nothing has been paid on either of the executions prior to the sale, and no entry of satisfaction has been made, or ordered to be made.

Defendant also (folio 105) placed in evidence certain records of other judgments against Alvin May, existing in 1873–4.

Mr. Whitfield, (folio 106.) As attorney for some of the other execution creditors, bid for and bought some corn at the sale, as shown by defendant's Exhibit C; one lot was grown on the Asa May place, the other on the Arendell place; agreed with Sloan that if the prior statutory lien held by him on those crops was for an amount large enough to exhaust them, he was to take his bids, &c. It was afterwards shown by Sloan that this was true, and thereupon witness informed Mr. Pasco, attorney for Sloan, that he no longer claimed the corn. Since that time witness has been told that he was relieved from his bids; the corn was not used by him, nor has he been paid for it, nor has any part of the price been credited upon his executions. Does not know how long Alvin May has been in possession of the Arendell place, but thinks, since January 1, 1872.

Charles A. Sloan, (recalled for complainant, folio 108,) denies the truth of Bailey's statement.

Sloan, (recalled, for self, folio 109.) Asa May delivered six mules each to witness and to Alvin May, and kept some himself. Asa May afterwards claimed the mules delivered to Sloan, as his own. Alvin May was in possession of the Arendell place at time of mortgage to Sloan & Co., and is still in possession, and witness understood at that time that he had a title, and that only a small balance was due on the mortgage.

Alvin May, (for Sloan, folio 113.) Got eight mules under the appraisement; *considered* that four of them were given under the January agreement; gave no allotment to Sloan that day; had paid Asa May from $9,000 to $11,000 on the mortgage indebtedness.

Cross-examined: Knows nothing of any business transaction between Sloan and Asa May in regard to the matters in controversy. "The last paragraph in the agreement of January 5, 1874, was put in at my instance, and I refused to sign it until this was added. I had been trading mules included in the mortgages, and I wanted this clause added, in order to protect the parties who had obtained the mules from me and paid for them."

Asa May, (recalled for self, folio 116,) had no conversation with Sloan, as represented, at Savannah, &c.

Exhibit A (folio 117) is a record of a suit and recovery by Sloan against Asa May for the value of six mules, begun January 4, and ended February 5, 1875.

There are also exhibits of the agreement by Alvin May to buy the Arendell place (folio 122); of proceedings, and order, (September, 1875,) to sell it under a previous mortgage of the place by Arendell (folio 123, &c.); and of an appraisement of mules (folio 150).

Argument.

Upon this record the main question is one of fact.

The law of Florida as to contracts for the sale of lands, so far as it bears upon this case, seems to be as follows:

A statute of frauds: "No action shall be brought, &c., upon any contract for the sale of lands, &c., unless the agreement, &c., shall be in writing, and signed by the parties," is in force: (Bush's Digest of the Statutes, 1872, p. 157.) The general rule, therefore, might be anticipated to be as laid down in Purcell *vs.* Minen, 4 Wallace, 513. Accordingly, the supreme court of the State hold that, in the case of a parol agreement for such sale, payment of the purchase money is not sufficient to take the case out of the statute, but that such payment, followed by a delivery of possession, or by possession *begun previously and so altered in its incidents as subsequently to be distinctly referable to such agreement*, is sufficient. (Tate *vs.* Jones, 1877, 16 Fla., 216.) In that case the agreement was stated in the bill to be by parol, and the statute was pleaded. The purchaser had been in possession *previously* to the ageement *as tenant at will;* but *afterwards*, having paid the purchase money, he built a dwelling-house, planted fruit trees, and received the crops, &c., for years together. This was held to be sufficient to avoid the statute.

In the present case the bill seems to rely upon an agreement in writing. Its allegations upon this point may be found upon folios 11, 12, 14, and 16. Their effect is that the plaintiff and defendant first agreed orally upon that which was secured by the insertion of the last clause in the January agreement, or, to use the plaintiff's language in summing up the matter, upon folio 16, "the same was so executed to carry out said understanding." This method of making written contracts is necessarily universal, and its statement here in detail will not make this case exceptional

or enable the complainant to construe or to eke out the contract in question by what preceded by way of *word of mouth*.

Our defense in other respects will, as I believe, render it unnecessary to elaborate this part of the case; but the matter is relied upon, and should be stated:

1. If the contract set forth in *the bill* is *written*, any *proofs* of a *parol* contract are irrelevant.

2. But if the court should think that the bill does not confine the plaintiff to a written contract, then, if the defendant by his answer (as here) denies the agreement, he need not insist *therein* upon the statute as a bar; but the plaintiff at the hearing must establish the agreement *by written evidence*, (Bank, &c., *vs.* Root, 3 Paige, 478); or in a case like the present, by showing, at least, a *parol contract partly performed*, (Story, Eq. Pl., 8th ed.; section 761 *a*); the principle being that he must, in such case, satisfy or avoid the statute.

Probably this will be admitted, but another observation in the same connection is pertinent. In the present case the parol contract relied upon is said by the complainant (folio 88) to have been made "*upon the morning of the 5th of January*, 1874, *before the sale, no persons being present except Alvin May, complainant, Mr. Pasco, and Asa May.*" Now, it will be seen that each of these persons deny this assertion. Still, although very difficult to do, it might be that circumstances, *i. e.*, the contemporaneous action of those interested, shows that the complainant is right.

The contemporaneous action relied upon here is that which Asa May did by way of *part performance*. What equity requires for an effectual part performance appears in Story, Eq. Juris., ~~Section~~ Sect. 761, &c. Briefly, *it must have a specific reference to the contract set up*. The contract here is for not only lands but mules, wagons, &c. The part performance relied upon as reflecting evidence upon the con-

tract, and confirming the complainant's story, is as to the personal property. The complainant does not say that *Asa May* delivered him possession of the *land*. He says that such possession was obtained *from Alvin May under the paper of December 13th, and previously to the 5th day of January*, when the alleged parol contract was made. See the paper itself (above), the bill (folio 10,) his own evidence (folio 81,) Floyd's evidence (folio 91,) and C. A. Sloan's (folio 92). In connection with what is thus shown to have been known to him, his statements as to Asa May's dealings with the land are not candid, even though he has himself furnished the above contexts for their explanation. They are: "That your orator went into possession of said lands; and, after the sale, the 1st Monday of January, 1874, the mules bought by said Asa May," &c., were delivered to your orator; and so were the wagons, (folio 13.) "Your orator further shows unto your honor that he entered into possession of the land mentioned in the agreement of the 13th December, 1873, and obtained possession of six mules and the two wagons by delivery to him by said Asa, in the full expectation that said Asa May would convey said land to him, as agreed on," (folio 17.) These are not allegations of such an entering into possession as the doctrine of part performance requires; and there is nothing in the bill or evidence to show an alteration in the complainant's conduct towards the land after the supposed contract by Asa May.

The case as to the personal property is not so simple. Nevertheless, even for that, I think that it will be shown further on that the facts show no part performance.

Granting here, however, that they do, the question is, how is that proof of the existence of a parol contract to convey *lands* as well as the personal property delivered. A parol contract to sell lands requires for its validity two substantive elements: 1, that there shall be a *contract;* and, 2d, a *part performance*. If the contract alleged had been proved

in this case, then it may be that proof of the part performance suggested would be sufficient to supply the second element. At least, this need not be now discussed. But the case seems different.

Where the existence of the contract is at issue, and the question under consideration is, how far, by a sort of *reversing lines*, the circumstances relied upon as part performance tend to prove the existence of what I have called the *first element* in a valid transaction of contract to sell lands by parol. What weight can be attributed to the mere delivery of mules and a wagon as against a complete contradiction of an alleged contract to sell *land*, mules, and a wagon? In such case, after all, there remains no circumstance *as to the land.*

Before more particularly addressing myself to the facts, I suggest that, so far from this being a case for specific performance, it seems that the complainant has made no case even for an action for damages, as he lost nothing *by Asa May*, and Asa May gained nothing *from him* by the January agreement. Asa May was master of the situation, without his assistance, and, besides, has gratuitously offered, over and again, to surrender to him the property purchased, upon being paid his debt.

At the time of the meeting at Mr. Pasco's office, on the morning of January 5, 1874, no *consideration* existed between Asa May and Sloan, to control their conduct towards one another; and the question is—What took place at that meeting to have that effect for any such purpose as is insisted upon by the complainant?

The claim *set forth in the bill* rests, as appears from a consideration of the passages bearing upon this point, upon the allegation of a *written* agreement only. By his testimony, however, the complainant sets up *two* agreements, one *oral*, upon which his case is in great degree rested, at least in the proofs.

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The claim *set forth in the bill* rests, as appears from a consideration of the passages bearing upon this point, upon the allegation of a *written* agreement only. By his testimony, however, the complainant sets up *two* agreements, one *oral*, upon which his case is in great degree rested, at least in the proofs.

1. If there were any ground for apprehending that he had established an oral agreement of the sort required by his prayer for relief, it might be worth while to scrutinize the bill in order to show that its *allegations* do not consist with such proof. But upon the evidence there seems no ground for such apprehension. In his bill, Sloan says that the agreement by which he seeks to bind Asa May (in whatever form it was) *was known to Alvin May*, (folio 14,) and in his testimony he says that the verbal agreement was made *in the presence of Alvin May and Mr. Pasco, besides the parties thereto* (folio 88). *Asa May* expressly denies the making at that time of any *verbal agreement of any kind* between himself and Sloan (folio 98); *Mr. Pasco* says that "*there was no other agreement than that reduced to writing*," (folio 105,) and *Alvin May* says that *he knows nothing of any business transaction between Col. Sloan and Mr. Asa May in regard to the matters in controversy*, (folio 115.)

That is, *every other person present at the time—persons vouched too by him as knowing the fact—contradict Sloan in this allegation*, so that I do not need to refer to the principle that the defendant had a right to demand that the complainant shall not mislead him in his pleading as to the true foundation of his claim, and was entitled to an opportunity of contradicting the allegation in his answer.

2. The difficulty which Sloan has in regard to the *written* agreement of January 5, 1874, although different in kind, is equal in degree.

It seems plain that in the absence of its last sentence that agreement gives no shadow of excuse for Sloan's contention. Sloan recognizes this throughout his bill and his evidence. He tells,—distinctly in both, but with detail in the latter,—how the writing was built up, viz: that when first drawn the last clause was wanting; that he objected to the absence of such a provision; refused in such absence to execute it; expressed his reason for such

refusal by referring to the December agreement; that such agreement was produced by Mr. Pasco, was by him handed to Asa May, and was read in silence by the latter; and that thereupon and therefore the clause was added. That both of the Mr. Mays and Mr. Pasco were present when this was done, (folio 82.) *All this is explicitly denied:* by *Asa May*, by *answer*, (folio 56,) and by *deposition* (folio 97); by *Mr. Pasco*, (folio 103); and by *Alvin May*, (folio 115). These gentlemen agree in stating that the addition was made at the instance of Alvin May, and for a distinct purpose then mentioned, and having no relation to the claim of Sloan. Mr. Pasco says, (folio 103,) that the papers without the addition were satisfactory to Sloan. The face of the paper is to the same effect. It purports to be a "Memorandum of propositions to *Alvin May by Asa May and A. M. Sloan*, relative to settlement of indebtedness." Therefore, the statement that it was first agreed upon by the propounders, before being presented to Alvin May, is probable; as well as that after having been so agreed upon, *he* was the person who suggested a modification.

Up to that occasion these persons supported the character of creditors having distinct interests by mortgage against an insolvent debtor, as well as by judgment upon such mortgage debts, which each proposed to enforce by execution at law levied upon the mortgaged property. I understand that no statute or decision by the Supreme Court of Florida authorizes such a proceeding by mortgage creditors; and in the absence of such the weight of authority in this country is against its validity. (2 Jones' Mort., § 1229, and cases cited in n.) However, in the present suit the parties could not, in any case, take benefit by such a suggestion; and, besides, it seems that the mortgage debtor expressly agreed that the sale might be made (folios 42 and 61.)

What then did Asa May do upon the morning of the day of sale, to justify the allegation that, at such sale, he bought a part of the property which had been mortgaged to himself, the whole of it being insufficient for his own satisfaction, in trust for the complainant?

That the whole of such property was thus insufficient, is shown as well by the fact that other creditors were interested that it should sell for more if worth more, as by the standing offer of the purchaser, (repeated in his answer in this cause,) to submit to an account of what his debt was worth upon the day of sale, and upon being paid that amount to convey such property to whoever will pay it, subsequent improvements by himself being included.

Sloan has always been aware of the necessity of showing that his claim is warranted by something said or signed by Asa May *at that time.* He distinctly places his claim upon that; and no other basis for it is pretended.

Upon analysis the following incidents to the January agreement may be observed:

1. The paper is informal—a "memorandum."

2. It is a paper of "propositions" in which *Sloan and Asa May appear upon one side, and Alvin May upon the other.*

3. Except where such propositions to Alvin May appear expressly to be made by Asa May and Sloan jointly, they are by Asa May severally.

4. There are no propositions by Asa May to Sloan, or *vice versa;* and no appearance of a consideration passing between them.

5. The language of the second sentence in the first paragraph does not bind Asa May to buy in all the property sold, but only so much as was subject to his claim, and it declares distinctly that such purchase will be for his own use.

6. As the sale was in form *under executions*, and embraced the equity of redemption, it was advisable to secure a release of Mrs. Alvin May's right to dower; and for like reasons it was proper to have Alvin May's express assent to the sale, as a *settlement of indebtedness.*

Some other observations upon the features of this paper will occur in the course of the argument.

Sloan suggests in his answer (folios 14, &c.) that it is extravagant to suppose that he would have executed the January paper if that were to accomplish no other purpose than the one ascribed to it by Asa May. This suggestion will not prevent that agreement from receiving a natural interpretation of its language—much less will it warrant another contract of which its words afford no evidence, to be interpolated therein. The laboring oar is upon Sloan, and it is for him to show that the transaction exhibits *the specific agreement which he sets up.* To suggest that the title set up by his opponent disparages his own character as a skilful man of business, is to discharge but a small portion of the burden upon him. I do not admit the truth of such suggestion; but if it were true, it might lay a foundation for farther proof; but standing alone, as here, it amounts to nothing.

But even that foundation is of the slightest! Sloan was interested in having the sale come off, to the amount, as appears by the sheriff's return, (folio 62,) of at least $1,259.46, and although this was no great matter compared with the large debt due to him from Alvin May, yet the hopes of securing the latter had mainly gone below the horizon by that time. The system of making advances upon crops, which had proved so generally disastrous to Southern agriculture, especially since 1865, in the present case was not only the ruin of Alvin May, but, perhaps, contributed to that of his merchants. Sloan and Company suspended De-

cember 18, 1873, (folio 116,) and the members of the firm probably knew for some time before that its condition was precarious. The Alvin May debt, assigned to Sloan, was probably regarded as a straw to grasp at. It cannot well be that intelligent creditors so largely interested had not informed themselves of the condition of their interest in a mortgage existing since January, 1872. Sloan says that the title to a part of the property conveyed therein had failed. He does not mention *the time* at which he found this out, or, therefore, whether or not he thought, in December, 1873, or January, 1874, that there was a chance of making something out of it. Probably, however, supposing him to be an intelligent man, he had previously found out that his security was very defective, for on the 13th of December, 1873, he did not insist upon having any part of it (I speak now of the land *outside of* the Asa May mortgage) conveyed to him. For that conveyance he selected (*and without pretense of any previous consent by Asa May*) one of the tracts (Lang) mortgaged to Asa May, and did not even seek to have *thrown in* any other land,—nor had he directed the sheriff to levy upon it. Putting ourselves, then, in his place in January, 1874, and laying aside for the moment his allegations as to what Asa May had agreed to *orally*, it appears that he was a creditor interested in having more than one thousand dollars worth of property brought to sale, and in a situation to desire to conciliate the debtor, who might have obstructed such sale. He therefore joins in the *proposal.* It is a proposal, however, by which he offered very little. In effect, to get out of the way some cloud upon the sheriff's right to sell, he gave up his mere *ghost of a claim* to the Arendell place, and agreed to discharge Alvin May *personally* from all debt to him. His hopes of satisfaction from the Arendell place had, in all probability, wholly disappeared, and, if the other portion of his security were worthless, there was little chance of his ever getting anything else out of so improvident a debtor. If all connected accounts

could be duly taken it would probably appear that the persons who in the end suffered for this reckless dealing between Sloan & Co. and Alvin May, (*reckless*, not so much because of the general condition of the country before 1872 as because of the financial condition of the debtor evidenced by the registry books of Jefferson county which showed him to be a large holder of lands under mortgage for the purchase money, which, so far as we can trace it, was *full*,) if these accounts could be taken, it would appear that the sufferers were probably not Sloan & Co., or Sloan, but *others*, with whom they had dealt for the articles afterwards furnished to Alvin May.

In any event, however, it cannot be true that Sloan negotiated with Alvin May in December, 1873, and January, 1874, whilst regarding himself as having any really *valuable* claim against him—beyond that, I mean, secured by his statutory lien mentioned by Mr. Whitfield, (folio 107,) which he hoped to make avail of, with his debtor's consent, under the execution sale that day about to take place. The part which he played in that paper is a subordinate one, as he both gave and received a small matter; the consideration received being not inadequate to that given. As for his account of the *rationale* of that sale, and of the non-reception of a part of the corn, (folio 88,) it may, after being compared with what is said by Mr. Whitfield, (folio 107,) and the return by the sheriff, (folio 65,) be left with the remark that his ability or his disposition to give a correct account of what passed in this general connection is so greatly disparaged at important points that no reliance can be placed upon it anywhere.

The part which Asa ~~Sloan~~ May took in the January transaction corresponded plainly with his situation. He was a preferred creditor to the amount (due and not due) of some $13,000. The *whole* of his debt, at all events, was not in a condition to be enforced, yet, as it was *preferred*, it was important to all concerned that it should be. If the lands were sold

under execution, Mrs. Alvin May would have at least an appearance of a claim for dower. He dealt liberally, and probably prudently, to that end, engaging to advance $3,000 for the purpose of setting up Alvin May and his wife at the Arendell place. He was in no need, and under no concern, to conciliate *Sloan*.

Moreover, it appears that what he had to do he did above board, his whole transaction with Alvin May being put into writing drawn by a leading gentleman of the bar. Why, if there were another, and more important, agreement *with Sloan*, was it not also set out in its terms? No need for concealment is suggested. Sloan represents that when he wished to procure some title to the Lang place *from Alvin May*, whose interest in it was really *nothing*, he had a writing executed doing this expressly, but when he dealt to the same end *with Asa May*, who was substantially its owner, (Alvin May and the gentleman who drew the December 13th agreement being both present, and less than a month having passed,) nothing was put into writing excepting an indefinite sentence in an agreement which referred in general to other matters, and *contained in an earlier passage an express contradiction thereto. That is his account of it.* Well might Mr. Pasco understand, (folio 104,) that the paper of January had superseded, in other words had substantially put an end to, the agreement of December. It is unnecessary here again to refer to *the account given by all the others then present and interested personally or professionally.* I am speaking of the probability of the theory relied upon by Asa May. The character which he sustains in the record is that of a prudent man. He sold prudently, took security for his debt that was worth probably twice its amount, (but thereby did not make full allowance for the fluctuations incident to an extraordinary period;) he gave his debtor a long time, requiring moderate annual instalments; he received payments thereupon from time to time, and at last proceeded to collect firmly and, which is often a part of prudence, with liberality to

his debtor. What ground is here *à priori* for supposing that without consideration this man would give away several thousand dollars of his property to a third party? Sloan repeats two or three times upon the record that, at the time of the sale, Asa May had already received some $11,000 of his debt from Alvin. This, of course, makes no matter here. Its utmost extent would be to show that the creditor here, as in the story told long ago, was an *austere man*, but if so, Sloan should have completed his narrative upon the same theory, and, complying with the old rebuke, have appeared to treat him as *known to be* an austere man; and at least to have required of him some contract to the existence of which other persons could testify.

The literal meaning of the sentence added to the agreement of January is to the same effect as the general coherence of the whole transaction. The *trades* (which is a word savoring of personal property) *not to be interfered with* are such as had *then* been *carried out in good faith and completed.* The expression *good faith* points to property sold under the impression that the seller thought he might sell a clear title, which does not correspond with the agreement of December, 1873; and the other expressions, *carried out* and *completed*, which were strong evidence of *good faith*, could not, upon the morning of January 5th, be predicated at all of the agreement of December 13th. Even if the very shallow pretense of Sloan were true, viz., that there were *subsequent events upon the same day* which gave *completeness* to the agreement of December, yet that would have been too late.

The interpretation which, under oath, Sloan puts upon the clause added to the January agreement is evidence of the same sanguine and very enterprising temper which led him, without communicating with Asa May, to purchase the Lang tract within a month of a sale which he anticipated, and which he must have believed would sweep away his vendor's title; and also to stipulate therein expressly that

he should at once go into possession thereof. There is some appearance of *the sinister* in this; or, if not, then at least evidence of that reliance upon *something's turning up*, which, in the case of a late eminent professor of that system of finance, is spoken of rather slightingly and as rarely turning out to advantage.

Sloan also points to the contemporaneous action of Asa May as confirming *his* construction of the agreement betwixt them.

It is not any dubious action of this sort that will serve Sloan's turn. To control the normal situation of the parties and the words of their agreement in this case requires a clear and consistent course pointing to one certain conclusion. As to any matter that occurred about the day of sale which presents Asa May as varying from the theory of the sale which he now suggests, I submit that it is fully accounted for by what he says in his answer, (folio 55,) viz.: "That in the hurry and confusion incident to going into possession of his purchase, this defendant was less particular and careful in coming to a complete understanding of the minor details than possibly he should have been with other persons. Knowing that all such matters as were left open could be adjusted upon a final settlement between the complainant, the said Alvin May, and himself, which settlement has never yet been had, this defendant at that time having entire confidence in complainant's integrity."

But this matter may be better discussed and illustrated orally.

I conclude by obserivng that this *contemporaneous action* of the parties shows plainly that it was not intended by the January agreement (however general the words) that Asa May should buy the whole property, but that the words in that respect were only betwixt himself and Alvin May, and formed no agreement betwixt himself and Sloan. What

Asa was to "buy in" was only such property as he had a lien upon, or would be applicable to his debt. The phrase "buy in" is to that effect, and so it was understood, for he ceased bidding whilst $10,000 of his debt was still unsatisfied; and for what property Sloan had liens on, *he* bid, or negotiated for with Mr. Whitfield.

Upon the whole matter I submit, that the complainant has failed to make out a case for a decree in his favor, and therefore that the decree below should be reversed.

S. F. PHILLIPS,
For the Appellants.

IN THE

Supreme Court of the United Stat

OCTOBER TERM, 1878.

ASA MAY,

Appellant,

vs.

A. M. SLOAN,

Appellee.

BRIEF FOR APPELLE

ON MOTION TO DISMISS APPEAL

CHAS. N. WEST,

Attorney for App

KELLY, PIET & CO., Printers and Stationers, Baltimore

Supreme Court

OCTOBER TERM, 18

ASA MAY,
Appellant,
vs.
A. M. SLOAN,
Appellee.

IN THE

Supreme Court

OF THE UNITED STATES.

OCTOBER TERM, 187

TO THE APPELLANT—

Please take notice that on Monday, the day of 1879, or as soon thereafter as counsel can be heard, I will move the Court on behalf of the Appellee to dismiss the appeal in the above entitled cause upon the ground—

That the record discloses that the matter in dispute does not exceed the sum or value of Five Thousand Dollars.

CHAS. N. WEST,
Attorney for Appellee.

ASA MAY,
Appellant,
vs.
A. M. SLOAN,
Appellee.

IN THE

Supreme Court

OF THE UNITED STATES.

BRIEF FOR APPELLEE ON MOTION TO DISMISS APPEAL.

The matter in dispute must exceed the sum or value of Five Thousand Dollars.

18 Statutes at Large, Part 3, 316.

It appears from the record that the matter in dispute is less than $5,000.

I. The Complainant in his petition for removal alleges, that the value of the property in dispute exceeds Five Hundred Dollars.—Record, page 156.

This has been held by this Court to be an allegation conclusive as to the matter being of value less than the jurisdiction of the Court, unless it appeared otherwise from the pleadings or proceedings in the Court below.

In Richmond *vs.* Milwaukie (21 How., 82, 392), the effect of the language used was the same as in this cause. The

complainant there alleged that the value of the property in dispute was "over $500," and the Court say in the same case, on page 82, that that allegation is the only evidence or averment of value. Here the complainant for the same purpose—to give jurisdiction to the Circuit Court—alleges that the value "exceeds $500." Therefore, if the allegation stands alone, the cause would be controlled by Richmond *vs.* Milwaukie, and the appeal would be dismissed.

II. We next inquire whether the allegation, that the matter in dispute exceeds the sum or value of $500, stands unmodified by other averments or evidence of value.

I submit that the record contains evidence that the value of the matter in dispute is less than $5,000.

1. The bill charges that on January 6th, 1874, one year before it was filed, May purchased the land at fifty cents per acre, at public outcry, or for $544.25, there being 1088½ acres in the tract in dispute.—Record, page 16.

2. So also the Sheriff's deed to May shows; and also that the price paid by May for the entire body of land, which included the tract in dispute, was $1,500.25.—Record, pages 45, 46.

3. May's answer, which concludes him, sets up that the land brought its highest market value; and as proof of the fact avers "that he subsequently proposed to Complainant that if he thought the property should have sold higher, he would consent to have it resold, which offer was declined by Complainant.—Record, page 58

The pleadings and evidence contain nothing else upon which to predicate value, and it is submitted that were there no allegation of value in the pleadings, the Court would find in the passages cited sufficient facts from which to draw a conclusive inference of value less than $5,000. The only doubt as to the availability of the facts arises from an inspection of the date of the sale referred to. It took place one year prior to the filing of the bill, and it may be contended that while the defendant is concluded as to the land having brought a full value then, such sale would be no criterion for the Court as to the value of the land one year later. But certainly that sale, with the Defendant's answer, would be good evidence on trial of facts *in consimili casu*, at law or in equity, and it would, therefore, seem to be sufficiently proximate to be acceptable to this Court as evidence from which they can infer value, for the purpose of settling the question of jurisdiction.

III. The allegation of value in the petition for removal, and the passages cited from the pleadings, constitute the only matter in the cause, to its termination in the court below, bearing upon value. If, therefore, the Court should hold that this cause is distinguishable from the second hearing of Richmond *vs.* Milwaukie and not governed by it, and that the sale in 1874 is too remote in time for a fair inference of value therefrom, the record stands destitute of allegation or matter from which to draw an inference of value exceeding $5,000, and the cause must be dismissed.

Richmond *vs.* Milwaukie, 21 Howard, 82.

"There is nothing in the allegations of the parties or in the "evidence to show that the value of the lots in question ex-

"ceeded two thousand dollars nor anything from which it can "be inferred. The appeal must therefore be dismissed for "want of jurisdiction in this Court."

IV. Now the foregoing position that there is nothing in the record alleging value or from which value may be inferred is true in every respect, unless an allegation of value contained in the petition for an appeal (Record, page 170,) may be entertained by the Court. While that allegation has come up with the record, it certainly is not part of the record of the cause decided, and is not interpolated in the petition for appeal in accordance with any statute of the United States, or rule or decision of this Court. It is, therefore, a voluntary affidavit filed in the cause since its decision, and if entertained by the Court at all, will be regarded in the light of an affidavit of value only. Knapp v Banks 2 How. 73 10 How 690

But if either the first or second position of this Brief be well taken, and the Court have before it either an allegation of value in the pleadings in the cause below, or sufficient matter whence to draw an inference of value, it will not entertain an affidavit to enhance the value stated or inferred.

Richmond *vs.* Milwaukie, 21 How., 392.
(See conclusion of opinion.)

In other words, if the Court can gather the value from the pleadings, it will do so, and in such case it will not open the doors of the case to a contest on affidavits over values.

V. But should the Court hold that the allegation of value in the petition for removal is not within the decision of Rich-

mond *vs.* Milwaukie, and that the record proper contains no averments or evidence from which value may be inferred, then the appellant may contend that affidavits of value are in order, and, therefore, that the affidavit in the petition for appeal will be entertained by the Court. I admit that in such case affidavits of value would be in order, but such admission does not include the affidavit in question. I think it very clear from the language of Judge Taney on page 393 of the case so often cited in 21 Howard, that the Court will never permit itself to become an arena for contests by conflicting affidavits over values. No case can be found in which such a proceeding has occurred. In every case in which the practice of hearing affidavits of value can be found, the party appellant appears to have submitted *affidavits*, by means of which the Court satisfied itself that the matter in dispute was of greater value than the jurisdictional requirement. No case of counter affidavits is in the books. Now, if I am right in this, the Court will have nothing before it for its information except the Appellant's affidavit, and it must either accept it as sufficient, and if sufficient, conclusive, or else reject it as insufficient. For the sufficiency of the affidavit no authority can be found, and it is respectfully submitted that to entertain this affidavit would be to inaugurate a new practice, for which no good reason exists. On the contrary, it is quite clear that thenceforth the jurisdiction of this Court would depend not upon the real value of the property or upon the presence of proper averments of value made in the cause in the court below, where values could properly be settled, but upon an *ex parte* affidavit of the party appellant, interjected in the appeal proceedings after the trial of the cause. If the simple affidavit of the Appellant after decree is sufficient, then the Court and appellee are concluded by an *ex parte* step in a cause after the opportunity for an issue has passed. The true theory of the practice seems to be this, that in a proper case

the appellant may file *affidavits of value* containing facts for the information of the Court; but there is no practice to accept as sufficient the bare allegation of the appellant, made under oath, as conclusive upon the court of its jurisdiction.

Williamson *vs.* Kincaid, 4 Dall. 19.
Course *vs.* Stead, 4 Dall, 22.
The Grace Girdler, 6 Wall. 441.
Rush *vs.* Parker, 5, Cr. 287.

VI. I have given the views that may be taken of the case by the Appellant and the Appellee, each from his own standpoint, the appellant holding the record destitute of averment and facts, and claiming his affidavit to be conclusive, and the Appellee maintaining that averment and facts *are* in the record and that the affidavit is inadmissible. There is a middle ground, however, that may be suggested. Possibly the Court may leave out of view the Complainant's averment of value exceeding $500, and may look through the record for any facts showing value, and as such may accept the value at the sale one year previously, and, for the same purpose, the Appellant's affidavit, and will weigh one against the other. Then, to make the Appellant's affidavit true, property, which he admits was sold for a fair market price one year before, had in that year become ten times as valuable. No explanation is given of this strange increase in times when real estate has taken quite a different course, but he relies on his mere assertion of value. I respectfully submit that the affidavit is overcome by the admitted fact.

CHAS. N. WEST,

Solicitor for Appellee.

ASA MAY,
Appellant,

vs.

L. C. RICE,
Assignee of
A. M. SLOAN,
Appellee.

IN THE

Supreme Court

OF THE UNITED STATES.

BRIEF OF CHARLES N. WEST, FOR APPELLEE.

The whole case in the Court below resolved itself into this:

May and Sloan were creditors of Alvin May, holding mortgage liens upon their debtor's lands. Sloan's mortgage covered land included in May's prior mortgage, and also other lands not so included. All the lands and personal property of their debtor being about to be sold under an execution issued at the instance of Asa May, two agreements were executed prior to said sale: one between Sloan and Alvin May, on the 13th day of Dec. 1873, by which May agreed to convey to Sloan the lands involved in this cause, and also some personal property, including six mules hereafter spoken of, he receiving a credit therefor upon his debt to Sloan (Record, page 39); the other between Alvin May, Asa May, and Sloan, on the 5th day of January, 1874, by which, amongst other things, it was stipulated that the Arendell Plantation, which was included in Sloan's mortgage, and not in May's, should be given up to Alvin May, without any consideration named therefor to Sloan; that Asa May should buy in all of Alvin May's property; and that all *bona fide* trades made by Alvin May in respect to any of the mortgaged property should be respected by Asa May, provided the trades had been carried out and completed, (Record, p. 42). At that time Sloan had taken possession of the property in dispute, under the agreement of December 13th.

The sale was had, Sloan stood by and did not bid or interfere. Asa May bid in all of the property and took title to

the same. Afterwards Sloan sold to Asa May the six mules specified in agreement of 13th of December, and which had been apparently sold by the Sheriff to Asa May; and the price therefor not being paid, he sued May for it, and recovered a judgment, which was paid. Subsequently, he calling upon Asa May for title to the land included in the agreement of Dec. 13, May denied his right to a conveyance, and a bill was filed by Sloan to have the land conveyed to him. The foregoing facts are not disputed.

There was much testimony at the hearing of the cause, in reference to the existence of an express understanding between the May's and Sloan, concerning the agreement of Dec. 13th and January 5th, Sloan maintaining that if it was fully understood that the paper of January 5th referred to his agreement of December 13th and May denying that such was the case.

I. Without attempting in a brief, to weigh the testimony of the parties *pro* and *con*, there are four patent facts, which, taken together, are submitted as conclusive in favor of Sloan's position.

1. That if his position be not correct, no possible reason exists for the appearance of Sloan in the agreement of Jan. 5.

2. That if his position be not correct, by that agreement he gave up all his rights over the Arendell property without any consideration, and reserved no other rights.

3. That if his position be not correct, he stood by and with priority of right as to much of the property sold, he permitted, without consideration to him, all of the property of his debtor to be sold, and bought in by another creditor, under an execution, which, as to much of that property, was of inferior dignity to his own mortgage lien, and asked for and received no benefit from the sale.

4. That upon the basis of the agreement of January 5th, he, being in possession of six mules, specified in the contract

of December 13th, but sold by the Sheriff and bought in by Asa May, subsequently sued May for the price of those mules, and recovered his judgment, upon the verdict of a jury, therefor. The record does not show the pleas or evidence, and we must assume that Asa May did plead his defence in this case, and that it was found against him, or else, that he did not plead it, and that it is now, in a case concerning property covered by precisely the same facts, an afterthought.

It is submitted that the logic of these facts is irresistible in favor of the appellee.

II. The Court below seems to have found them conclusive, as a decree was rendered for the appellee, and now the appellant contends that the decree was wrong on the facts, and that the weight of evidence was upon his side.

While an inspection of that evidence is invited, it is submitted that this Court will not reverse the decision of the Circuit judge upon the ground that a doubt as to the correctness of the decree is raised by conflicting testimony.

Alviso *vs.* U. S. 8 Wall. R. 337.
Newell *vs.* Norton, 3 Wall. R. 257.

"We have frequently said that appellants should not expect this Court to reverse a decree of the Circuit Court merely upon a doubt created by conflicting testimony."

Moorenwood *vs.* Enequist, 23 How. R. 491.
The Potomac, 2 Black, R. 581.
P. W. & B. R. R. Co. *vs.* P. & H. S. T. Co. 23 How. 209.
The Grace Girdler, 7 Wall. R. 196.

Most of the cases cited above were appeals in admiralty, but the principle is the same in equity causes, and as such was applied in Alviso *vs.* U. S. 8 Wall. R. 337.

CHAS. N. WEST,
Attorney for Appellee.